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Considerable additions have been made to the notes dealing with the Chancery Division.

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CHARITABLE TRUSTS:

THE JURISDICTION

OF

THE CHARITY COMMISSION,

BEING

THE ACTS CONFERRING SUCH JURISDICTION, 1853—1883,

WITH INTRODUCTORY ESSAYS AND NOTES ON THE SECTIONS.

BY

RICHARD EDMUND MITCHESON, M.A., B.C.L.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW, AND STUDENT OF
CHRIST CHURCH, OXFORD.

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TO

HENRY LONGLEY, ESQ., C.B.,

Chief Charity Commissioner,

THE FOLLOWING WORK

IS

(BY PERMISSION)

RESPECTFULLY INSCRIBED.

PREFACE.

THE great outburst of charitable enthusiasm which has shown itself in the last few years and the interest which seems now to be felt in all social questions, have made it more than ever necessary that knowledge of the legal machinery for the establishment, preservation and modification of charities should be easily accessible. Since the leading works on the subject of charities (Shelford's Law of Mortmain and Tudor's Charitable Trusts) were written, great changes have taken place in respect of that machinery. The Charity Commission, which was then almost in its infancy, has gradually attracted to itself the main part of the charity business which once came of necessity before a Court of Equity, and may still, in law, come before it, the old methods of procedure being still available though but little used. The Charity Commission has become the chief court for the administration of charities, and it seemed fully time that the extent and limits of

the powers of this court, and the procedure by which those powers are exercised and set in motion, were dealt with in a separate treatise.

The well-known work on the Charitable Trusts Acts by Messrs. Cooke and Harwood, of the Charity Commission, is scarcely on the lines of the present volume, and, moreover, has not been republished for twenty years, having reached its second edition in 1867. It set out the leading statutes affecting charities in general, and contained at the end a digest of leading cases on the same general question. Moreover, from its date, it necessarily included neither the Charitable Trusts Act of 1869, the Endowed Schools Acts, nor any of the numerous later statutes that have conferred jurisdiction upon, or increased or modified the existing jurisdiction of the Charity Commission.

The following work is intended to give a picture of this jurisdiction in all its branches. There seemed to me to be no better method of doing this than that which has now been adopted by several leading text-book writers, *i.e.*, to set out *in extenso* the statutes on which the law is based, with notes

of the cases which have arisen under those statutes and explanations where necessary. The book does not profess to be a general statement of the law of charities. With a large number of questions which would be dealt with in such a statement it deals incidentally or not at all. The doctrine of Mortmain, together with the question, which arises under the Mortmain Act, falsely so called, of pure and impure personalty, hardly fall within its province at all. The procedure in Courts of Equity for the establishment or protection of charities, and even the powers and duties of charitable trustees, it treats of only so far as the jurisdiction of the Charity Commissioners is affected by them. The terse and clear little treatise on Charities by Mr. Whiteford, published so recently as 1878, made it unnecessary for me to treat generally of the principles on which charitable trusts are construed and administered. At the same time, there are two questions relating to the construction and administration of charities generally, the determination of which is so essential to the giving the Commissioners jurisdiction and determining its subsequent exercise, that at the risk of not saying much that is new, I have

written at some length upon them in the two essays (Parts I. and II. of my Introduction) entitled, "What are Charitable Trusts," and "The Doctrine of *Cy-près*."

In conclusion, I have to express my sincere thanks to Mr. H. Longley, Chief Commissioner, for his help in furnishing me with forms of application, &c. in use in the office of the Commission, and for several kind suggestions; to Mr. Cecil Russell, Junior Counsel to the Attorney-General in Charity matters, for kind suggestions; and to Mr. G. R. Alston, of the Chancery Bar, for his very generous assistance in the correction of proofs, and in many other ways.

RICHARD E. MITCHESON.

8, New Square, Lincoln's Inn,
July, 1887.

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ADDENDA ET CORRIGENDA.

Page 62.—On clearness of charitable intention, see *In re Douglas, Obert* v. *Barrow*, W. N. (1887) 96.

,, 64, note (*r*).—*Biscoe* v. *Jackson* is affirmed on appeal, W. N. (1887) 86; 35 W. R. 554.

,, 110, note (*e*).—*For* "sect. 32," *read* "sect. 66."

,, 131, note (*x*).—*For* "52 Geo. 3, c. 111," *read* "52 Geo. 3, c. 101."

,, 136, note (*t*).—*For* "28 & 29 Vict. c. 97," *read* "28 & 29 Vict. c. 99."

,, 161, note (*b*).—*For* "18 & 19 Vict. c. 76," *read* "19 & 20 Vict. c. 76."

,, 167, line 24.—*For* "investments," *read* "investment."

,, 168, line 7.—*For* "sect. 60," *read* "sect. 66."

,, 171, line 14.—*For* "Charitable Trusts Act, 1833," *read* "Charitable Trusts Act, 1853."

,, 172, note (*v*).—*For* "46 & 47 Vict. c. 52, s. 92, subs. (1)," *read* "32 & 33 Vict. c. 83."

,, 175, note (*a*).—*For* "Endowed Schools Act, 1869," *read* "Endowed Schools Act, 1874."

,, 235, line 13.—*Dele* "and the Attorney-General;" and in lines 15 and 16, *for* words following "50*l*.," *read* "any of the trustees or persons acting in the administration of the charity."

,, 240, note (*b*).—*For* "s. 33," *read* "s. 23."

,, 308, note (*a*).—*For* "the Copyhold Acts, 1857 and 1858," *read* "the Copyhold Acts, 1852 and 1858."

,, 314 *et seq.*—For instance of allotments not being charitable, see *In re Christchurch Inclosure Act*, W. N. (1887) 79.

,, 333, 335, 336.—For meaning of "charity property" under sects. 5, 10, 11, 41 of the City of London Parochial Charities Act, and for example of a petition under sect. 10, see *In re St. Botolph Without Bishopsgate Parish Estates*, L. R., 35 Ch. D. 142.

CHARITABLE TRUSTS.

THE JURISDICTION OF THE CHARITY COMMISSION.

INTRODUCTION.—PART I.

THE HISTORY OF CHARITY COMMISSIONS.

Intro. Part I.

§ 1. THE history of Charity Commissions in England dates from the time, immediately succeeding the suppression of the monasteries, which witnessed the passing of the first poor law, and the legal recognition and consequent growth of charitable foundations to meet the wants of the poor, eleemosynary and educational, which the poor law failed to satisfy. The system then instituted provided for the appointment of commissions of a temporary and local character. The statute of Elizabeth (*a*), which is the starting point of the doctrine of charitable uses in English law, and by a reference to which the expression "charitable uses" is interpreted (*b*), made provision for the appointment from time to time by the Lord Chancellor or Keeper of the Great Seal for the time being, and by the Chancellor of the Duchy of Lancaster for the time being for lands within the County Palatine of Lancaster, of commissioners to inquire into all gifts of real and personal estate for certain uses therein enumerated (*c*), and into all mis-

Commissions under the statute of Elizabeth.

(*a*) 43 Eliz. c. 4.

(*b*) See Tudor's Charitable Trusts Act, p. 3; Shelford's Law of Mortmain, 1st ed. p. 59.

(*c*) See *post*, p. 29.

Intro. Part I.

employment of such gifts. The commissioners appointed were to be the Bishop of the Diocese in which the lands were situated or the gift was to be applied, together with his Chancellor and other persons of good and sound behaviour. The inquiry was to be made "by the oaths of twelve lawful men or more of the county," and by all other good and lawful ways and means. As the result of the inquiry the commissioners were to make orders for the due and faithful employment of the property given to such uses, and the orders so made were to be certified under the seals of the commissioners or any four or more of them into the Court of Chancery in England or the Court of Chancery within the County Palatine of Lancaster; and for the due execution of these orders the Lord Chancellor or Lord Keeper, or the Chancellor of the Duchy of Lancaster for cases within his jurisdiction, was to make provision. After the commissioners had made their certificate, any person who was aggrieved by any such order might complain to the Lord Chancellor, or Lord Keeper, or Chancellor of the Duchy, who might hear the complaint, and annul or alter the order complained of, as they might think right.

History and gradual disuse of such commissions.

§ 2. For more than 150 years commissions were issued under this statute. They were at first very numerous, especially in the twenty years immediately succeeding the Stuart Restoration. From the beginning of the eighteenth century their number declined; during the last fourteen years before the accession of George the Third no more than three were issued, and three only were issued in the course of his reign. The date of the last commission appears to have been in 1804 (*d*); and except for the

(*d*) See Lord Brougham's speech on the Education of the Poor Bill, Hansard's Parl. Debates, vol. 38, p. 606. It is stated in Shelford's Law of Mortmain, p. 278, that the last commission was issued in the

enumeration of charitable uses, which is contained in the preamble (on which see *post*, p. 29), this statute of Elizabeth may now be regarded as obsolete (*e*), though it has never been actually repealed.

Proceedings in a court of equity by information.

§ 3. From the earliest times charities had been specially subject to the jurisdiction of courts of equity in this country (*f*), both as regards their first establishment and their administration when established. The corpus of charitable property could not safely be dealt with without the approval of the court, and for any alterations in the rules laid down by the founder the sanction of the court had to be obtained. The Attorney-General, representing the Crown in its character of *parens patriæ*, was the protector of charities, as the property of the public, and could sue *ex officio* by information for the reform of abuses to which they might be subject. The Attorney-General alone could bring such a suit, but he might be set in motion by any person who complained of the administration of any charity, in which case such person would generally appear

case of *The Kirkby Ravensworth Hospital*, 15 Ves. 305; and it would appear that that was the case referred to by Lord Brougham. The matter came before the Court of Chancery in the year 1808, on exceptions to the decree of the commissioners, upon the ground that they had acted without authority.

(*e*) See the remarks of Lord Redesdale in *Corporation of Ludlow* v. *Greenhouse and others*, 1 Bligh, N. S. 61.

(*f*) The earliest recorded case in which the establishment or administration of a charity was dealt with by a court of equity is that of *William Babington* v. *William Gull*, in the reign of Henry VI., though at that time the term charity had not yet received a legal definition. The bill in this case "complaining that plaintiff's mother, the widow of Sir William Babington, Knight, had placed 600 marks in the hands of defendant for the purpose of founding a charity in the church of St. Peter of Flawforth, in Nottinghamshire, which he had neglected to do," together with the answer of William Gull thereto, is given at p. lvi of the Calendars of the Proceedings in Chancery, Record Commission Publications.

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as relator in the suit, and would be liable to pay the costs of it if unsuccessful (*g*).

From the date of the last commission issued in accordance with the statute to the establishment of the present Charity Commission under the first Charitable Trusts Act (*h*), proceedings for the institution of inquiries into and reform of charities followed this practice.

By petition under Sir Samuel Romilly's Act.

§ 4. A readier mode of securing the same result was given by the act known as Sir Samuel Romilly's Act (*i*), which allowed any two or more persons on obtaining the fiat or certificate of the Attorney or Solicitor-General to present a petition to the Chancellor, Master of the Rolls, or Court of Exchequer, praying such relief as the nature of the case might require, such petition to be heard in a summary way upon affidavits or such other evidence as should be produced, and the order made thereon to be final and conclusive, unless appealed against to the House of Lords within two years from its entry.

Working of this act.

The passing of Sir Samuel Romilly's Act in 1812 (*j*) was indicative of the strong feeling, which was already abroad, that the administration of charities throughout the country was in an eminently unsatisfactory condition, and that every facility should be given for the investigation and remedying of suspected breaches of charitable trusts. Sir Samuel Romilly's Act itself does not seem to have done much towards securing an impartial examination into the management of charities. Any two

(*g*) See Tudor's Charitable Trusts Act, p. 33. It has been held that there should always be a relator to an information, to be responsible for costs, even when it is brought with the sanction of the Charity Commission: *Attorney-General* v. *Boucherett*, 25 Beav. 116.

(*h*) 16 & 17 Vict. c. 137.

(*i*) 52 Geo. III. c. 101.

(*j*) *Id.*

or more persons being able to present petitions under it, whether they were in any way interested in the charity or not, vexatious suits were continually brought by mere outsiders for the sake of the costs which they might get out of the funds of the charity (*k*).

Returns as to charities by churchwardens, &c.

§ 5. With a view to providing some remedy for the evil case into which charities had fallen, a series of inquiries was undertaken. As early as 1786 an act had been passed (*l*) requiring the ministers, churchwardens and overseers of every parish in England to return on oath an account of all charitable donations which had been given by deed or will for the benefit of poor persons within their respective parishes; and in the schedule to the act certain questions were propounded as to the nature and history of the charity, to which answers were to be returned. A committee of the House of Commons was appointed in the following year to inspect and consider the returns made under that act. Out of 13,000 parishes and townships from which returns had been required only fourteen had failed to make such returns, but the condition of charities throughout the country which the returns disclosed was most unsatisfactory. In spite of this the matter was left in abeyance for more than twenty-five years longer, when an act was passed (*m*) ordering a memorial or statement of the real and personal estate and of the annual income, investment and objects of all charitable donations in England and Wales, then founded or thereafter to be founded, with the names of the founders or benefactors, an account of the instruments of endowment and the names of the trustees, to be registered by the trustee or trustees in the office of

(*k*) See the remarks of L.JJ. Selwyn and Wood in *Braund* v. *Earl of Devon*, L. R., 3 Ch. 807; 16 W. R. 1180.

(*l*) 26 Geo. III. c. 58, s. 4.

(*m*) 52 Geo. III. c. 102.

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the clerk of the peace of the county or city in which the poor or other persons to be benefited by the charitable donation might dwell, and the clerk of the peace was forthwith to transmit a duplicate or copy of the memorial to the Enrolment Office of the High Court of Chancery.

Lord Brougham's Commission of Inquiry, 1818 to 1837.

§ 6. Four years later, on the motion of Lord Brougham (then Mr. Brougham), a committee was appointed by the House of Commons to inquire into and report upon the education of the lower orders in the metropolis. In consequence of the reports made by this committee, an act was passed in the year 1818, intituled "An Act for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor" (*n*). The number of the commissioners was not to exceed fourteen, and any three were to form a board, who might meet at any place in England, and require the attendance of all persons acting as trustees of charity estates or funds, and the production of any deed or document relating thereto; but upon this power two limitations were made, closely resembling the limitations upon the power of the Charity Commissioners under the Charitable Trusts Act, 1853, it being provided that no person should be obliged to travel more than ten miles from his place of abode, or to produce deeds having reference to estates which he had purchased, without notice of any charitable trust and without fraud; the commissioners were to deal only with charities for the education of the poor; of these a general exemption was granted to educational charities having special visitors, governors, or overseers appointed by the founders; and there were also expressly exempted from the operation of the act the Universities of Oxford and Cambridge, with their colleges

(*n*) 58 Geo. III. c. 91.

and halls, schools or other endowments of which universities, colleges or halls were trustees, the Colleges of Westminster, Eton and Winchester, the Charterhouse, Harrow and Rugby, all cathedrals or collegiate churches in England, and charities for the education of Jews or Quakers. In pursuance of this act, commissioners were appointed under the Great Seal on the 28th August, 1818, who, with an interval of fifteen months in 1830, and with variations from time to time in their powers and constitution, remained in office till July, 1837. The commission is generally known as Lord Brougham's Commission. Its reports, which extended to thirty-eight folio volumes, dealt with upwards of 28,000 charities, and form the basis of all authentic information as to the charitable trusts of the country. By an act passed in the year 1819 (*o*) the number of commissioners was increased from fourteen to twenty, and their powers were extended to charities other than educational; while by another act of the same year (*p*) any five or more of the commissioners were authorized to certify to the Attorney-General such cases as appeared to them to require legal interference, whereupon the Attorney-General might apply to the court by petition or information, or commence a suit in the Court of Chancery or Exchequer for obtaining such relief as the nature of the case might require. After this the commission was continued in office from time to time without further changes until July, 1830, and then, after an interval of fifteen months, was re-appointed under the statute 1 & 2 Will. IV. c. 34, for a limited period and with slightly altered powers. The exemption of charities having special visitors, governors, or overseers appointed by the founders was omitted, while a new exemption was introduced of certain Royal hospitals.

(*o*) 59 Geo. III. c. 81. (*p*) 59 Geo. III. c. 91.

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The powers of the commission ceased on the 15th of August, 1834, but in the following year a new act was passed (*q*), under which thirty-one commissioners were appointed, with Lord Brougham at their head, with powers similar to those of the last-mentioned commission. The act continued in force till July, 1837.

The Select Committee of 1835.

§ 7. To examine the reports of Lord Brougham's Commission, so far as they were then published, a Select Committee of the House of Commons was appointed in 1835, having among its members Lord John Russell, Sir Robert Peel, and Lord Campbell. The Committee recommended "that the superintendence and, in certain cases, the administration of all property devoted to charitable uses should be intrusted to a permanent board of three commissioners or some other independent authority; that such board should have authority to call for, from time to time, and to enforce, a return or an account of the annual funds and property of any charitable institution, and have power to summon before themselves, or other persons specially authorized by them, all parties concerned in the management or administration of any charitable institution or funds; in case of necessity to appoint, and, upon adequate cause clearly established, to remove trustees; to take care that no sale, mortgage, or exchange of the charity property be effected without their concurrence, and that all funds applicable to charitable purposes be invested upon real or government security; to superintend their application; to suggest and (if necessary) to enforce arrangements for the preservation of all documents and other writings relating to charity estates; to give acquittances in discharge of all payments in cases where no competent party can be found to give the same; to audit from time

Their recommendations:— 1. Appointment of board to superintend charities,

(*q*) 5 & 6 Will. IV. c. 71.

to time the annual accounts of trustees and other persons administering charity property; to have the power of removing masters and ushers and to sanction the salaries to be paid to them, as also such allowances upon their retirement as the circumstances may require and the funds will admit, such power to be exercised and such sanction given concurrently with visitors where any such exist; and generally to authorize such arrangements as shall appear calculated to promote the object of the founder; and in cases in which that object is useless or unattainable, to suggest such other appropriation as may appear desirable. The board to be empowered to suggest schemes for the government of all charities, and for the management of all estates and funds belonging to such charities, and to correct any abuses therein, subject to the like concurrence in cases where there are special visitors; and in cases where parties are willing, the board to be empowered, by themselves or others duly authorized by them, to adjudicate and finally determine all disputes respecting conflicting claims and accounts. Trustees to be indemnified for the acts which they may perform under the direction of the board." The committee also recommended that no proceedings should be instituted in equity until the case had been investigated by the board and certified by them to the Attorney or Solicitor-General; but that where the parties, notwithstanding this, insisted upon proceedings at law or in equity, the board should be directed to certify the special circumstances to the court, who should be empowered to refer the investigation of the facts and circumstances to the board, the latter to report thereon to the court. They suggested finally that the board be authorized to call upon all proper persons to make returns on the following points:—The name of the person who gave any charity; when given; whether by deed or will; for what

including the audit of their accounts.

2. To suggest schemes.

3. No proceedings in equity without certificate of board.

4. Board to call for returns.

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purpose given; whether in land or money; in whom the same was at the time then present vested; the amount in money; the annual produce; the number and names of the then present trustees; the persons with whom the title deeds of any charity were deposited; and how the income was applied.

The Royal Commission of 1849.

§ 8. In 1849 a Royal Commission was appointed, with the Earl of Chichester as chairman, to examine the reports of Lord Brougham's Commission, which were by that time complete, and report further upon them. The first report of this commission was published in 1850. The recommendations contained in it, which agreed in almost every point with those of the Select Committee of 1835, resulted in the Charitable Trusts Act of 1853, which was in fact originally drafted by the Royal Commission.

The Charitable Trusts Act, 1853.

§ 9. This act embodied by far the greater part of the changes recommended in the reports of the Select Committee and of the Royal Commission, but with important omissions. In the first place, no power of audit is given to the commissioners under this act, authorized though they are to require accounts yearly from the trustees of charities, and this omission has never yet been supplied. In the second place, the recommendation of Lord Brougham's Commission that power should be given to divert dole charities to useful purposes was not followed in this act, but the judicial powers given in sects. 2—10 of the Act of 1860 would, to a certain extent, comprise such diversion; by the Endowed Schools Act of 1874, conferring upon the Charity Commissioners the jurisdiction of the Endowed Schools Commissioners, the power was given in the case of all charities which came within

sect. 30 of the Endowed Schools Act, 1869 (*r*); and by the City of London Parochial Charities Act, 1883, in the case of all charities coming within that act (*s*).

Appointment of a permanent commission.

§ 10. The Act of 1853 provided for the appointment of a permanent commission to watch over the administration of charities, but from this supervision certain charities were exempted. Of these, Roman Catholic charities were granted exemption for a limited period, prolonged from time to time by special acts (*t*). By the last of these the exemption was continued until the 1st day of September, 1859; after which date Roman Catholic charities became subject to the operation of the Charitable Trusts Acts (*u*). Large powers for the conduct of inquiries into the condition and management of charities were granted to the commission; dealings with the corpus of charitable property were put under its control; the secretary of the board was authorized to hold charity lands as a bare trustee, and official trustees of charitable funds were appointed, to whom stocks and other securities might be transferred; the sanction of the commissioners was made a necessary condition to judicial proceedings by any person other than the Attorney-General in connection with any charity, except where the action was brought by one claiming adversely to the charity (*v*). A new jurisdiction was conferred upon equity judges, and upon the Chancellor and Vice-Chancellor of the County Palatine of Lancaster to give relief in charity matters upon application in chambers, without information or petition, where

(*r*) See *post*. See also *The Campden Charities Case*, *post*, p. 75.

(*s*) *Post*, sects. 13 and 14.

(*t*) 19 & 20 Vict. c. 76; 20 & 21 Vict. c. 76; 21 & 22 Vict. c. 51.

(*u*) See *post*, on sect. 62 of the Charitable Trusts Act, 1853.

(*v*) As to whether this included proceedings at law as well as in equity, see *post*, on sect. 17 of the Charitable Trusts Act, 1853.

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the gross annual income of the charity exceeded 30*l.*; where it did not exceed 30*l.* application was to be made to the county court or district court of bankruptcy in which the charity was situated, and power of appeal was granted to certain persons who might be aggrieved by the order of such court. Vexatious suits brought by mere outsiders for the sake of costs, which had been among the worst evils of the old system, were prevented by a clause limiting the persons by whom applications might be made. Lastly, the board was empowered to frame schemes for the appropriation of charitable property to new trusts, such schemes to be confirmed by Act of Parliament.

Under the provisions of this act the first permanent Charity Commission was established. It consisted of three permanent members and a fourth member, who, with the secretary, should hold office during her Majesty's pleasure.

Changes effected by the Charitable Trusts Amendment Act, 1855.

§ 11. Two years later a fresh act was passed (*x*), amending the first act in matters of detail, but making no very important alterations in the powers of the board. The official trustees of charitable funds were granted perpetual succession and their rights and duties strictly defined (*y*). The secretary of the board for the time being was constituted a corporation sole by the name of the Official Trustee of Charity Lands, in whom, as a bare trustee, charity lands might be vested (*z*). Fresh restrictions were placed upon charges and leases of charity estates by trustees (*a*); but leases, sales, &c. authorized by the board were declared valid, notwithstanding any disabling acts (*b*).

(*x*) The Charitable Trusts Amendment Act (18 & 19 Vict. c. 124), *post*.

(*y*) Sects. 17—28.

(*z*) Sect. 15.

(*a*) Sect. 29.

(*b*) Sect. 38.

§ 12. Five years later an addition was made to the work of the board which almost completely altered its original character. Up to the year 1860 their work had been that of inquiry and advice, control over dealings with the corpus of property, the issue of certificates sanctioning judicial proceedings and the drafting of provisional schemes. They were now given large judicial powers of their own, exactly similar in character to those conferred by the Act of 1853 upon the judges of the Court of Chancery sitting in chambers, and upon the county courts and district courts of bankruptcy. An important limitation, however, of these powers, is contained in sect. 4 of the Act of 1860, by which the jurisdiction of the board, in cases where the income of the charity exceeds 50*l.*, only arises on application being made to them by a majority of the trustees of the charity; it has been calculated that this limitation on the jurisdiction of the commission applies to 85 per cent. in value of the charities of the kingdom, though not more than 10 per cent. in numbers (*c*).

Power of appeal from orders of board.

§ 13. Power of appeal is given (*d*) from the orders of the board by petition to the Court of Chancery, the petition to be brought by the Attorney-General or any person authorized by him, and in certain cases by any two inhabitants of the parish where the charity is applicable; though on the meaning of the section there has been some dispute (*e*).

Extension of jurisdiction of county courts and district courts.

§ 14. By the same act (*f*) the jurisdiction of county courts and district courts of bankruptcy was extended to charities of which the gross yearly income should not exceed 50*l.* This extended jurisdiction has not been much

(*c*) See Minutes of Evidence before Select Committee, Parliamentary Papers, 1884, vol. 9, p. 15.

(*d*) Sect. 8.

(*e*) *Re Hackney Charities*, 12 W. R. 1129; 4 N. R. 530; on appeal, 13 W. R. 398; 11 L. T., N. S. 758; 34 L. J., N. S., Ch. 169; 11 Jur., N. S. 126.

(*f*) Sect. 11.

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Disuse of this jurisdiction, and of the jurisdiction of the Court of Chancery in charity matters.

used. The result of the act has been that nearly all original jurisdiction over charities is now, and has for a long time been, confined to the Charity Commission, except in the case of charities which come within sect. 4 of the act having a net annual income of over 50*l.*, where a majority of trustees are unwilling to join in making application to the board. In such cases the procedure must still be by summons in chambers under sect. 28 of the Charitable Trusts Act, 1853, or by the older system, which still remains available in all charity cases, of information (now, under R. S. C. O. I. r. 1, "an action") brought by the Attorney-General or petition under Sir Samuel Romilly's Act in an equity court. For charities which do not come within sect. 4 of the Act of 1860 the jurisdiction of the courts of equity in suits of first instance other than administration actions or cases certified to the Attorney-General by the Board has become practically obsolete. Applications to the Court of Chancery for the appointment of trustees or establishment of schemes authorized by the Board dropped from seventy-five in the year in which the act was passed to twenty in the succeeding year, and seven in the year after that. For the nine years from 1862 to 1871 the average number of such applications to the Court of Chancery was seven. The number of applications in the years 1872—1876 varied between two and one, and since the last-mentioned year there has been no such application to an equity judge at all, except one in 1881. Applications of the same nature to county courts declined even more rapidly in view of the new jurisdiction conferred upon the board of commissioners, dropping from 143 in the year 1860 to three in the year 1861. Between that year and the year 1874 there were only six applications to county courts under sect. 32 of the Act of 1853, and since the year 1874 they have ceased altogether. The jurisdiction of district

courts of bankruptcy in charity matters ceased with the abolition of such courts by the Bankruptcy Repeal and Insolvent Court Act, 1869 (*g*). On the other hand, the number of orders made by the Charity Commissioners under sect. 2 of the Act of 1860, has been larger in nearly every year than the whole number of charity cases brought before the Court of Chancery and the county courts combined in any year before the passing of the act. The number of orders made by the commission in the year immediately following the passing of the act was 207, and the average number in the next 22 years was 361 (*h*). In the same year, 1860, an act was passed dealing with the question of Roman Catholic charities and the superstitious uses with which they were often involved (*i*).

Growth of the judicial work of the board.

§ 15. Some question having arisen whether the jurisdiction of the Charity Commission was ousted by private Acts of Parliament, and by decrees of the Court of Chancery in regard to particular charities providing that the powers of making orders as to the appointment and removal of trustees, and the sale, exchange, leasing and improvement of the property of charities should be exercised by that court, an act was passed in 1862 enacting that no provision of any Act of Parliament or decree of the Court of Chancery relating to any charity should exclude the jurisdiction which might otherwise be exercised by the Charity Commissioners.

Saving of the powers of the commission in certain circumstances by the Act of 1862.

§ 16. The short Act of 1869 (*k*) made but little alteration in the powers of the commissioners, but cleared up certain difficulties which had beset the working of the Charitable

The Charitable Trusts Act, 1869.

(*g*) 32 & 33 Vict. c. 83.

(*h*) See on this the Minutes of Evidence before the Select Committee of 1882 (P. P. 1884, vol. 9), and the Reports of the Charity Commissioners, *passim*.

(*i*) 23 & 24 Vict. c. 134, *post*.

(*k*) 32 & 33 Vict. c. 110, *post*.

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The Endowed Schools Act, 1869.

Trusts Acts. In the same year the Endowed Schools Act, 1869, was passed, temporarily limiting to a certain extent the jurisdiction of the Charity Commission, by providing for the appointment of Endowed Schools Commissioners to deal with the grammar and middle schools of the country; public schools and public elementary schools in receipt of an annual grant from Parliament being exempted from the operation of the act. By the Endowed Schools Act, 1873, the earlier act was amended in certain particulars, the exemption was extended to elementary schools whose annual income from endowment should not exceed 100*l.*, and the powers of the Endowed Schools Commissioners were extended to endowments vested in her Majesty in right of her Crown or of the Duchy of Lancaster.

Transfer of the jurisdiction of the Endowed Schools Commissioners to the Charity Commissioners in 1874.

§ 17. In the year after the passing of the last-mentioned act the work of the Endowed Schools Commissioners, who had been appointed in 1869, was transferred to the Charity Commission. Their powers and duties were thus increased to a magnitude greater than before the passing of the Endowed Schools Act, 1869. By the Endowed Schools Act, 1874, incorporating the Endowed Schools Acts, 1869 and 1873, powers of themselves initiating schemes for the better administration of charities were conferred upon the commissioners in respect of such endowments as came within the purview of the acts; while under the Charitable Trusts Acts they had no power of making any schemes except on the application of persons connected with the charity. The 30th section of the Act of 1869 recognized a very wide extension of the doctrine of *cy-près*, by allowing endowments for the payment of doles, marriage portions, apprenticeship fees, and any purposes which might have failed altogether or become insignificant in comparison

with the magnitude of the endowment, if originally given to charitable uses in or before the year 1800, to be applied by a scheme of the commissioners for the advancement of education. Under this section, however, the consent of the governing body must be obtained before the application of such endowments to educational purposes. A scheme made under the Endowed Schools Acts is to be submitted for the approval of the Committee of Council on Education, and petitions may be presented to her Majesty in Council appealing against the scheme, or to the Committee of Council on Education, praying that it may be laid before Parliament (*l*). If no such petition be presented, the scheme will become law by an Order in Council declaring her Majesty's approbation of it.

Increase in the number of Charity Commissioners.

For the performance of the new duties imposed upon the commissioners by the transfer to them of the jurisdiction of the Endowed Schools Commissioners, the number of the commissioners was raised from three, at which it had continued since the passing of the Charitable Trusts Act, 1853 (*m*), to five, the new commissioners to have the same powers and duties as the old.

Grant of certificates of incorporation.

§ 18. The Charitable Trustees Incorporation Act, 1872, empowered the commissioners to grant certificates of incorporation to trustees of charities on application by them. The grant of such certificates was left entirely within the control of the commissioners, who have granted them only under exceptional circumstances, the advantages of such incorporation being for the most part attained by the vesting of charity lands and funds in the Official Trustee of Charity Lands and the Official Trustees of

(*l*) Cf. sect. 37 of the Endowed Schools Act, 1869, with sect. 13 of the Endowed Schools Act, 1873.

(*m*) Minutes of Evidence before Select Committee on Charitable Trusts Acts, P. P. 1884, vol. 9, p. 1.

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Charitable Funds. Since the passing of the act up to the year 1881, according to a Parliamentary return made in that year, only nine certificates of incorporation had been granted under the act.

City of London charities.

§ 19. Since 1874 two acts have been passed which have added very considerably to the duties of the commission. By the Charitable Trusts Act of 1853, charities within the City of London not exceeding the annual value of 30*l.*, were exempted from the jurisdiction given by the act to the county courts and district courts of bankruptcy over charities, the annual value of which should not exceed that sum. But the Act of 1860, which conferred upon the Charity Commissioners the jurisdiction formerly exercised by the county courts and by equity judges sitting at chambers, gave to the Charity Commission the same powers in all respects of dealing with charities within the City of London as in the case of all other charities. These powers were found insufficient for the proper control of charities so ancient, numerous and obscure, as the City parochial charities, and at last, in deference to the reiterated expression by the Charity Commissioners of the need of extended powers being conferred upon them in this connection, a commission was appointed in the year 1878 to inquire into the condition and management of such charities. In 1880 they made their report, recommending, among other things, the appointment of a special commission to have power of dealing with and making schemes for the City parochial charities, including the application of them *cy-près*, in accordance with the statutory extension of that principle contained in sect. 30 of the Endowed Schools Act, 1869. As a result of this recommendation the existing Charity Commissioners were, by the City Parochial Charities Act, 1883, appointed to

serve as such special commission, for a limited period, but two new commissioners were added to their number, to enjoy for such period all the powers of the commissioners appointed under the Charitable Trusts Act, 1853, and the Endowed Schools Act, 1874. A preliminary investigation into the condition of these charities, and the best manner of applying them, was to be made and reported on.

Allotments.

§ 20. In the preceding year the passing of the Allotments Extension Act, 1882, had thrown upon the commissioners the duty (1) of deciding what proportion of the income of a charity was for the benefit of the poor of the parish, and therefore what proportion of the lands of the charity was applicable for the purposes of the act; (2) of settling rules for the making and management of the allotments in certain cases; and (3) of hearing complaints in cases where trustees were accused of non-compliance with the act. They have also the work imposed upon them of giving to trustees certificates of the unfitness of particular charity lands for the purposes of allotment, and are required in future charity schemes to provide for the setting apart of portions of charity lands for allotments.

In the year 1882 the Prison Charities Act was also passed, empowering the Board to make schemes for Prison Charities on the application of a Secretary of State.

Bills introduced for the amendment of the Charitable Trusts Acts, but not carried.

§ 21. A number of bills have from time to time been proposed for the amendment of the Charitable Trusts Acts, 1853—1869. The points in which these acts have been thought to need amendment have been—(1) the removal or extension of the limit imposed by the fourth section of the Act of 1860 on the jurisdiction of the Charity Commissioners, so that the powers of the commissioners, in the

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case of charities whose net annual income exceeded 50*l.*, should no longer be dependent upon the will of a majority of the trustees of the charity; (2) the grant of a power of audit, which was recommended in the report of the Select Committee of 1835, and was felt by the commissioners to be a necessary supplement to their power of requiring accounts from the trustees of charities; (3) the extension of the *cy-près* limits on the lines of sect. 30 of the Endowed Schools Act, 1869, and the advanced view of the Court of Appeal in *The Campden Charities Case* (*n*). The first of these bills was introduced in the year 1871, but did not get further than the second reading. Its main propositions were—(1) to allow the commissioners to exercise their jurisdiction without application made to them; (2) to give them power of applying the funds of a charity which had become useless or prejudicial, in such manner and for such purposes as they might consider best calculated to promote the *general* objects of the charity, or, in other words, power of diverting charity funds to new objects, beyond the limits of the present doctrine of *cy-près*, on grounds of public policy; (3) to empower any court having authority to frame a scheme for a charity to remit the matter to the Charity Commission, with directions for a scheme (*o*).

In 1878 a bill was introduced into and read a second time in the House of Lords, based on the recommendations of the commissioners contained in their reports for the years 1876 and 1877. The main provisions of this bill, which is printed in the House of Lords Papers, 1878, vol. 3, were directed to two objects—(1) to confer upon the board more ample powers of regulating the administration of charitable endowments by means of the appointment of trustees, and of such an extension of the scope of charities

(*n*) See *post*, p. 75.

(*o*) P. P. 1871, vol. 1, p. 249.

as the altered circumstances, either of their endowments or of their objects, might call for; (2) to regulate legal proceedings in respect of charitable endowments so as, on the one hand, to protect them against unnecessary and vexatious legislation, and, on the other, to afford facilities for the protection of their property, which their public character and the consequent absence of the safeguard which private interest supplies appeared to suggest. The bill, however, did not provide any legislative restriction upon private appointments of trustees of charities, nor did it propose to grant to the commissioners any power of auditing charity accounts.

In the next year a bill was introduced to provide for the contribution by charities towards the expenses of the Charity Commissioners. It proposed that a stamp duty should be charged on all charities, whose accounts are required by law—*i.e.*, by sect. 44 of the Charitable Trusts Amendment Act, 1855—to be annually transmitted to the board, at the rate of 1 per cent. on the gross income of the charity, and that the section should not be held to be complied with unless the accounts sent in under it were so stamped. The justice of some contribution by charities towards the expense of their superintendence by the board may be considered undeniable, but the difficulty of obtaining annual accounts from the trustees of charities, which is already considerable, would have been seriously increased by such a tax, while the income derived from it would hardly have compensated for the trouble and expense of enforcing the transmission of accounts (*p*).

(*p*) By sects. 61 and 88 of 5 & 6 Vict. c. 35, and sect. 28 of the Charitable Trusts Amendment Act, 1855, charities are exempted from taxation by way of income tax, but not from payment of rates. It was at first thought that trustees of hospitals and other charities were free from liability to such rates, on the ground that their occupation was not "beneficial," which was the only kind of occupation con-

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In 1881 a bill was introduced to amend generally the Charitable Trusts Act, 1853, and the acts amending the same. Its object was to extend to the commissioners, in pursuance of the recommendations in the Reports of 1835—1850, the powers originally exercised over charities, exclusively, by courts of equity (*q*). It proposed to extend the jurisdiction conferred on the commissioners by sect. 2 of the Act of 1860, by enabling it to be exercised, except for the establishment of schemes, in the case of all charities upon the application of the Attorney-General or any five inhabitants of the parish where the charity was administered or applicable; but in deference to the frequent objections of charity trustees to vest charity lands in the official trustee, the power of making orders to that effect was not to be extended. Other important changes proposed in the bill, as printed by the House of Commons after being brought down from the Lords, were—1. That Acts of Parliament relating to charities should be as capable of alteration as provisions of the original founders. 2. An extension of the power of diversion granted in sect. 30 of the Endowed Schools Act, 1869, by allowing the income of a charity applicable to the purposes there mentioned to be applied by scheme, on request of the trustees, to a

templated by the act 43 Eliz. c. 2. It has been held, however, in the latest cases that the occupation must be beneficial only in the sense of being productive, and that "if it is productive . . . there is nothing in the act which requires the overseers to follow the produce in its subsequent application." Certain charities are, however, exempt from rating under special Acts of Parliament, *i. e.*, places of worship under 3 & 4 Will. IV. c. 30, property occupied by literary, scientific and artistic societies under 6 & 7 Vict. c. 36, s. 1, and, at the discretion of the rating authorities, Sunday and ragged schools under 32 & 33 Vict. c. 40. Bills were introduced in 1870 and 1871 to exempt all charities equally from liability to local rates; but they failed to become law. See Rosher on Rating, pp. 26—34, and 69—74.

(*q*) See 29th Report of the Commissioners, P. P. 1882, vol. 20, p. 23.

hospital, dispensary, or provident society, or for otherwise encouraging provident habits, or for pensions or allowances to persons not in receipt of parochial relief. 3. Greater facilities for passing schemes which are thought, from their nature as going beyond the limits of *cy-près* recognized in courts of equity, to require the authority of Parliament. It was proposed that they might be submitted to the Committee of Council on Education, and afterwards approved by her Majesty in Council, in the manner of schemes made by the commissioners under the Endowed Schools Acts, 1869—1874. 4. An amendment of sect. 17 of the Charitable Trusts Act, 1853, chiefly in regard to proceedings for the recovery of any rent or debt due to a charity, by requiring in such cases notice to be sent to the board, who might make orders as to the prosecution of such proceedings. 5. That the Attorney-General might direct the board to represent him in legal proceedings respecting charities, and that the board might itself sue for the recovery of charity property worth not more than 20*l.* a year, the board being authorized to appear in legal proceedings in its own name instead of in the name of the persons who might happen to be commissioners. 6. Simplification of the procedure for the appointment of new trustees, by making a resolution of the old trustees and an order of the board effectual for vesting in the new trustees, with the old, the charity estate, and no appointment of new trustees to be effectual without the approval of the board. 7. Substitution for the two reports, required of the commissioners annually, one to her Majesty under sect. 60 of the Charitable Trusts Acts, 1853, and one to the Committee of Council on Education under the Endowed Schools Act, 1873, together with accounts to be laid before Parliament annually, of one report to be transmitted to her Majesty under sect. 60

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of the Charitable Trusts Act, 1853, incorporating the accounts of charitable funds. 8. The appointment of inspectors as the board might think fit. The bill was read a third time in the House of Lords, but was withdrawn in the House of Commons after the first reading.

The bill introduced in 1883 for the amendment of the Charitable Trusts Acts, 1853—1869, was identical in almost every particular with the bill of 1881. The opposition to it was, however, so strong that it had to be withdrawn after the first reading.

The Select Committee of 1884 on the Charitable Trusts Acts.

§ 22. The following year saw the appointment of a Select Committee of the House of Commons to inquire into the operation of the Charitable Trusts Acts, 1853—1869, to consider and report how far it might be expedient to amend the powers exercised under them by the Charity Commissioners, and also to inquire into the working of the Allotments Extension Act, 1882. The committee sat for half-a-year, heard thirty-four witnesses, representing the various classes interested in charities, from the Charity Commissioners themselves to farm labourers, and issued two separate reports—one in July of 1884 on the Charitable Trusts Acts generally, and a special one in December on the Allotments Extension Act. They recommended generally that the powers and duties conferred upon the commissioners might be safely extended, but that such extended powers should not apply in the case of charities or endowments devoted to religious objects, or where one half or more of the charity income is derived from voluntary contributions. They recommended in particular that the limit imposed by sect. 4 of the Act of 1860, in respect of charities with an income of over 50*l.* per annum, should be withdrawn, and that a further step should be taken for transferring to the commissioners the powers exercised by

the High Court of Justice for the control and reform of mischievous or wasted charities; that the appeal which exists under the Charitable Trusts Acts, to the High Court of Justice, guarded by the sanction of the Attorney-General, should be maintained; that when in the opinion of the commissioners a greater change in the disposition of the funds of a charity is expedient than is sanctioned by the doctrines of the court, the scheme should be laid before Parliament, in the same manner as certain schemes under the Endowed Schools Acts, and that a standing committee should be appointed each session to consider such schemes. They suggested that the wishes of localities should be more directly recognized in connection with the administration of charities, and that the principle of introducing into the governing bodies of charities the local representative element, which had to a certain extent been recognized by the commissioners, should be extended. They recommended the concentration of charities within a certain area under one management, the municipal and representative county authorities being in their opinion the best bodies to initiate schemes under which the endowed charities of a district might be grouped together. They advised that where a charity open to all classes existed within the limits of a municipal corporation, notice of any scheme affecting such charity should be given to the corporation as to trustees, and that full public inquiry should be held before any scheme was finally assented to. These recommendations of the Select Committee are as nearly as possible on the lines laid down from time to time by the commissioners in their reports, and closely followed in the Bills of 1881 and 1883 for the amendment of the Charitable Trusts Acts. They do not, however, recommend that the power of audit over charity accounts should be given to the commissioners, though the want of this has been often

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commented on in the commissioners' reports; and no statutory extension of the limits of *cy-près* is suggested.

Report of the Select Committee on the Allotments Extension Act, 1882.

§ 23. The Select Committee's report on the working of the Allotments Extension Act, 1882, notices several points in the act on which difficulties have from time to time arisen. It shows (1) that there is nothing in the act to relieve the trustees or the commissioners from having primary regard in working the act to the provision of a good income for the purposes of the charity, and that where there is a conflict of interest between the charity and allotments there is no direction which is to prevail; (2) that there is room for great difference of opinion as to the meaning of the words in sect. 11 of the act, "unsuitable on the ground of distance or any other ground;" (3) that the prohibition in sect. 13, sub-sect. (6), as to the letting of charity lands for more than twelve months was unworkable; (4) that where land which should have been let in allotments under the act had been let on lease by the trustees against the provisions of the act, the act gave no power to set aside the lease, and was thus made a dead letter. They suggested that action might be taken under the Poor Allotments Management Act, 1873 (*r*), to appoint a committee of management of the allotments, who should hire land from the charity trusts, and by an amending act be entrusted with the powers conferred on the commissioners by the Act of 1882.

Conclusion.

§ 24. The course which legislation and suggested legislation have hitherto followed has been the gradual transference to the Charity Commissioners of the jurisdiction formerly exercised by courts of equity. Applications may indeed still be made to the Chancery judges sitting in

(*r*) See *post*.

chambers, with the sanction of the Charity Commissioners, for the appointment of trustees or establishment of schemes, where the income of the charity exceeds 30*l.*, and to the county courts where the income of the charity is less than 50*l.*; but such applications are practically obsolete. Besides the regular procedure in which orders are made by the Charity Commission appointing trustees and establishing schemes under sects. 2 and 4 of the Act of 1860, there may also be (a) cases brought before the board which fall within sect. 5 of the Act of 1860, in which, the suit being of a contentious nature, proceedings are taken in the courts either by the Attorney-General or by the parties upon a certificate granted by the board; (b) cases, the nature of which forms no obstacle to the exercise of the board's jurisdiction, but in which, the charity income being more than 50*l.* a year, the trustees of the charity decline to make an application, on which proceedings may, under sect. 4 of the Act of 1860, be based; (c) cases in which the Attorney-General initiates proceedings, independently of the board, these being of rare occurrence. The old procedure by way of information (now, under the Rules of the Supreme Court, O. 1, r. 1, to be called an action) brought by the Attorney-General at the relation of some person, and the procedure by way of petition under Sir Samuel Romilly's Act, are still theoretically open, though in practice they are hardly ever used. The Charity Commission, however, has powers much wider than ever belonged to the old courts of equity. They can themselves initiate proceedings in all cases which come within the Endowed Schools Acts, or the City of London Parochial Charities Act, and make schemes under these acts on their own motion, which are subject, however, to the approval of the Committee of Council on Education, and of her Majesty in Council, and in certain cases to a parliamentary veto. In framing schemes under the

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Charitable Trusts Acts, they are still bound by the doctrine of *cy-près*, and schemes which go beyond the limits of that doctrine still require an Act of Parliament to establish them; but the doctrine of *cy-près* is now so broad and liberal (*s*), that there are few schemes which could require to be so established, and the practice of applying for an Act of Parliament under sects. 54—60 of the Act of 1853 is never now resorted to.

(*s*) See Introduction, Part III. *post*, p. 74.

INTRODUCTION.—PART II.

WHAT ARE CHARITABLE USES?

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Enumeration of charitable uses in 43 Eliz. c. 4.

§ 1. The enumeration of uses in the preamble to 43 Eliz. c. 4, is taken in English law as the basis of the doctrine of charitable uses, and only the uses named in that statute, or those which by analogy are deemed to be within its spirit and intendment, are held to be charitable (*a*). "Here," says Sir William Grant, speaking of the Court of Chancery, the signification of the word charity "is *chiefly* derived from the statute of Elizabeth." The definition clause of the Charitable Trusts Act, 1853, defines charity as including the endowed foundations or institutions which come within the meaning, purview or interpretation of the statute of Elizabeth, "or as to which, or the administration of the revenues or property whereof, the Court of Chancery has or may exercise jurisdiction." The limitation introduced by Sir William Grant in the word "chiefly" to the exhaustiveness of the statute and the alternative definition in the Act of 1853, are apparently intended to cover those uses which, while not strictly within the meaning or interpretation of the statute, have been held to be within its spirit and intendment. There are no charities over which, as such, the Court of Chancery can exercise jurisdiction other than those that come within the spirit or intendment of the statute of Elizabeth.

The enumeration in 43 Eliz. c. 4, is as follows:—"Some

(*a*) See judgment of Sir William Grant, M. R., in *Morice* v. *Bishop of Durham*, 9 Ves. 405.

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for relief of aged, impotent, and poor people; some for maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities; some for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways; some for education and preferment of orphans; some for or towards relief, stock, or maintenance for houses of correction; some for marriages of poor maids; some for supportation, aid and help of young tradesmen, handicraftsmen and persons decayed, and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes."

Classification of such uses.

§ 2. Shelford (*b*) classifies the charitable uses thus enumerated, or brought by analogy within this enumeration, under four heads:—1. The relief of the poor (in various ways); 2. The advancement of learning; 3. The advancement of religion; 4. The advancement of objects of general public utility. They may all be brought under the definition of charity given by Lord Camden (*c*), "A gift to a general public use, which extends to the poor as well as to the rich."

It is obvious that the whole division of religious uses is only brought by analogy within the intendment of the statute. They are, in fact, counted as charitable by analogy with repair of churches and with education.

I. For the poor.

§ 3.—I. *Relief of the Poor.*—Under this head would come in the first place the following uses mentioned in the statute:—The relief of aged, impotent, and poor people, the maintenance of sick and maimed soldiers and mariners, the preferment of orphans, marriages of poor maids, the

(*b*) Law of Mortmain, ed. 1, p. 61. (*c*) *Jones* v. *Williams*, Amb. 651.

supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed, the relief or redemption of prisoners or captives, and the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes.

Two main questions arise as to this branch of charitable uses. Firstly, what class of people are meant by "poor"? Secondly, are gifts to poor relations charitable?

Meaning of poor.

§ 4. It was decided as far back as 1744, by Lord Hardwicke (*d*), and again in 1762, by Sir Thomas Clarke, M. R. (*e*), that the word "poor" must be limited to those not already relieved by the parish; and the principle was continually acted on in the Court of Chancery (*f*), and has been re-affirmed in recent cases, that a charity for the poor must not be in aid of the rates, for that is to the benefit of the rich rather than of the poor (*g*). Some doubt was thrown on the rule by Lord Eldon in *Attorney-General* v. *Corporation of Exeter* (*h*), and according to Lord Lyndhurst in the same case, not every appropriation of such a charity fund is forbidden which may prevent some individuals from applying for relief who otherwise might be obliged to do so. Moreover, in *Attorney-General* v. *Blizard* (*i*), it was held by Sir J. Romilly, M. R., that

(*d*) *Attorney-General* v. *Price*, 3 Atk. 108.

(*e*) *Attorney-General* v. *Clarke*, Amb. 422.

(*f*) *Attorney-General* v. *Wilkinson*, 1 Beav. 373; *Bishop of Hereford* v. *Adams*, 7 Ves. 330; *Attorney-General* v. *Bovill*, 1 Ph. 767.

(*g*) *In re Poplar and Blackwall Free School*, 8 Ch. D. 543; 26 W. R. 827; 39 L. T. N. S. 88, where, on charity schools being taken over by the School Board, Jessel, M. R., suggested that the funds would properly be applied for objects which would not otherwise be provided for out of the rates; cf. *Lechmere* v. *Cutler*, 24 L. J. N. S. Ch. 647; 3 Eq. Rep. 938; *In re Prison Charities*, L. R. 16 Eq. 129.

(*h*) 2 Russ. 53.

(*i*) 21 Beav. 233; cf. *Attorney-General* v. *Mayor of Berwick*, Tam. 239.

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trusts expressly declared in aid of the poor rates and other parochial burdens of a parish may still be charitable, though rather as coming within the meaning of the words "payment of fifteens, setting out of soldiers, and other taxes," than as a charity for the poor. It is to be observed, however, that the words of the statute are "for the aid or ease of any *poor* inhabitants concerning payment of fifteens," &c.; and in *The Attorney-General* v. *Corporation of Exeter* (before cited) the rents of lands given to the Corporation of Exeter for the aid and relief of the poor citizens and inhabitants of Exeter "who are heavily burthened by fee farm rents of that city, and other impositions and talliages," were not held to be properly applied to the payment of fee farm rents due from the city, repairing the gaol, maintaining the prisoners, and other similar public purposes. If such a trust is to be supported as a charity, it should rather be considered as being for a public purpose within the analogy of the words "repair of bridges, ports, havens, causeways, sea-banks, and highways."

That a trust in aid of the rates may be good as a charity was maintained by Romilly, M. R., in *Attorney-General* v. *Bushby* (*k*). "There may be a trust for the benefit of ratepayers just as much as for the benefit of persons who are not ratepayers." On the same principle, gifts "to the use of the sinking fund," and "in exoneration of the national debt," have been upheld as charities (*l*), since they are for a general public use.

Poor relations.

§ 5. The question of charities for poor relations was for some time in a state of great uncertainty. The cases of an immediate distribution among an existing class of poor relations, and of a permanent endowment for the benefit of

(*k*) 24 Beav. 299.

(*l*) *Thellusson* v. *Woodford*, 4 Ves. 227; *Newland* v. *Attorney-General and others*, 3 Mer. 684.

poor relations in the future, were not very clearly distinguished (*m*). The principle would seem to be, that where there is to be distribution among an existing class of individuals, being poor relations, there is no charity in the legal sense, and none of the rules with regard to charitable uses apply; it is only where an endowment is created that there is a charity (*n*). In the former case the gift is good, though there are no kindred who can properly be called poor (*o*); but the fund will be divided among such only as come within the degrees prescribed by the Statute of Distributions (*p*).

A charity for poor relations, on the other hand, must be confined to those who are really poor (*q*), and its scope obviously cannot be limited by the Statute of Distributions (*r*). An endowment for the benefit of relations,

(*m*) Thus, in *Brunsden* v. *Woolredge*, Amb. 507, it is at first sight far from clear whether there was to be an immediate distribution of the whole fund or the creation of an endowment; and so in the two reports of *Isaac* v. *Defriez*, Amb. 595; and 17 Ves. 373, n.

(*n*) *Thomas* v. *Howell*, 18 Eq. 208; 22 W. R. 676; 30 L. T. N. S. 244; *Attorney-General* v. *Price*, 17 Ves. 374; *Ommaney* v. *Butcher*, T. & R. 271. See, however, *Mahon* v. *Savage*, 1 Sch. & Lef. 111, an Irish case, where a gift for immediate distribution among poor relations was treated by Lord Redesdale as a charitable bequest. A legacy payable once for all, and not creating a perpetual trust, may be charitable, if it could not have proceeded from motives of personal bounty to particular individuals: see Jarman on Wills, vol. 1, p. 213.

(*o*) *Goffe* v. *Webb*, Toth. 30.

(*p*) *Carr* v. *Bedford*, 2 Ch. Rep. 146, p. 77; *Griffith* v. *Jones*, 2 Ch. Rep. 394; *Harding* v. *Glyn*, 1 Atk. 468; *Edge* v. *Salisbury*, Amb. 70; *Brunsden* v. *Woolredge*, Amb. 507; *Widmore* v. *Woodroffe*, Amb. 636; *Green* v. *Howard*, 1 Bro. C. C. 31; *White* v. *White*, 7 Ves. 423.

(*q*) *Attorney-General* v. *Duke of Northumberland*, 7 Ch. D. 745; 26 W. R. 586; 38 L. T. N. S. 245; 47 L. J. N. S. Ch. 569, per Jessel, M. R., who commented severely on the remark of Wickens, V.-C., in *Gillam* v. *Taylor*, 16 Eq. 581; 21 W. R. 823; 28 L. T. N. S. 833, that there might be a charity for relations with 10,000*l.* a year. See also *Bernal* v. *Bernal*, 3 My. & Cr. 559; and cf. *Browne* v. *King*, 17 L. R. Ir. 455.

(*r*) *Attorney-General* v. *Price*, 17 Ves. 371; *White* v. *White*, 7 Ves. 422.

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simply as relations, would be void as creating a perpetuity.

An endowment for relations may, however, be educational, and, in that case, though the persons to be benefited are not poor at all, it will be upheld as an educational charity (*s*). In such cases attempts have been made from time to time to limit the meaning of "relations" or founder's kin to certain fixed degrees of relationship (*t*), but without success.

Poor's charities.

§ 6. A charity for the relief of the "poor" may be for the "poor" simply (*u*), for the poor of such a parish (*x*), for the poor on testatrix's little estate in Suffolk (*y*), for the poor maintained in a workhouse (*z*), for the widows and orphans of a parish (*a*), or to the widows and children of seamen belonging to a town (*b*). The last two uses might also come under the clause for the "preferment of orphans." Gifts to erect cottages for the poor, with four acres of land apiece, for making conduits

(*s*) *Attorney-General* v. *Sidney Sussex College*, L. R. 4 Ch. 722; 38 L. J. N. S. Ch. 656.

(*t*) *Spencer* v. *Warden and Fellows of All Souls' College*, Wilmot's Notes, where, the words being "*de consanguinitate, genere et sanguine*," Mr. Justice Wilmot decided that it was the intention of the founder to give a preference to his blood *ad infinitum;* cf. Burn's Ecclesiastical Law, p. 489, on the appeal to the visitor of Winchester College, in which it was contended that all claims upon the funds of the College based on consanguinity had ceased.

(*u*) Duke, 132; *Attorney-General* v. *Peacock*, Rep. t. Finch, 245; *Attorney-General* v. *Mathews*, 2 Lev. 167.

(*x*) *Woodford* v. *Parkhurst*, Duke, 70; *Attorney-General* v. *Clarke*, Amb. 422; *Attorney-General* v. *Bovill*, 1 Ph. 762; *Attorney-General* v. *Wilkinson*, 1 Beav. 370; *In re Lambeth Charities*, 22 L. J. N. S. Ch. 959. So, also, for a parish generally: *Champion* v. *Smith*, Duke, 81; *West* v. *Knight*, 1 Ch. Ca. 134; *Attorney-General* v. *Webster*, L. R. 20 Eq. 483; 44 L. J. N. S. Ch. 766; *In re St. Bride's, Fleet Street*, W. N. (1877) 95.

(*y*) *Bristow* v. *Bristow*, 5 Beav. 289.

(*z*) *Attorney-General* v. *Vint*, 3 De G. & Sm. 704.

(*a*) *Attorney-General* v. *Comber*, 2 S. & S. 93; cf. *Thompson* v. *Corby*, 27 Beav. 649.

(*b*) *Powell* v. *Attorney-General*, 3 Mer. 48.

to almshouses, for building a house in which the poor may take alms (*c*), for building a house for twelve decayed gentlewomen (*d*), and for letting out land to the poor at a low rent (*e*), are also charitable. The commonest form for such charities to take is that of dole charities, *i. e.* distribution of money, clothes, food, &c., at fixed seasons (*f*).

Under charities for the relief of the aged or impotent poor will come gifts "to such an hospital," to the master and governors of a hospital, to the poor maintained in a hospital, for the support of a common laundress in a hospital, and of a chaplain for prayers (*g*). There cannot be a charity for the relief of the aged and impotent who are not also poor (*h*). So a gift for children under twelve of the tenantry on an estate who were not necessarily either orphaned or poor has been recently declared not charitable (*i*).

Uses now out of date.

§ 7. Of the uses for relief of the poor mentioned in the statute some are now practically obsolete, *i. e.*, the relief or redemption of prisoners and captives, and the aid or ease of any poor inhabitant concerning payment of fifteens, setting out of soldiers, and other taxes. Charities for such purposes would now generally be applied *cy-près* (*j*). Apprenticeship charities, which are the commonest form of endowments for the supportation, aid, and help of young tradesmen and handicraftsmen, are also, owing to the decline of the apprenticeship system, of little real benefit, and a disposition is growing for applying them generally to schools for technical education, the modern equivalent of

(*c*) Duke, 111.

(*d*) *Attorney-General* v. *Power*, 1 Ball & B. 145.

(*e*) *Crafton* v. *Frith*, 15 Jur. 737; 20 L. J. N. S. Ch. 198.

(*f*) On the *cy-près* application of such charities, see *post*, p. 77.

(*g*) Duke, 81—83. See also *Attorney-General* v. *Kell*, 2 Beav. 575.

(*h*) Duke, 132.

(*i*) *Browne* v. *King*, 17 L. R. Ir. 448.

(*j*) See *post*, p. 70.

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apprenticeship (*k*). An endowment "for the increase and encouragement of good servants" has been upheld as a charity, apparently on this analogy (*l*). Charities for old decayed tradesmen (*m*), or for decayed freemen of a company (*n*), would be for "persons decayed" within the meaning of the statute.

§ 8. Gifts for "the marriage of poor maids" may be charitable, even though they have wealthy relations (*o*). The gift may be, according to Sir Francis More's reading of the statute, for a wedding dinner or wedding apparel, but not for a wedding ring; nor may it be for the incontinent, or those who marry against the consent of their parents (*p*).

Advancement of learning.

§ 9.—II. The advancement of learning would cover the clauses "schools of learning, free schools and scholars in universities," and education of orphans. It is in itself a charitable use, even though the benefit of the poor is not the object; and a school expressly for gentlemen's sons has been held a charity (*q*). The charity may be as general as possible, as for the benefit, advancement, and propagation of education and learning in every part of the world (*r*); or its benefit may be limited in almost any way that the donor wishes, and the limitation may be either absolute or preferential. The charity may be limited to relations or kin (*s*), who in this case need not be poor. It may be

(*k*) *Post*, p. 78.

(*l*) *Loscombe* v. *Wintringham*, 13 Beav. 87.

(*m*) *Attorney-General* v. *Painters' Co.*, 2 Cox, 51; cf. *In re White's Trusts*, L. R. 33 Ch. D. 449.

(*n*) *Attorney-General* v. *Ironmongers' Co.*, 2 M. & K. 576.

(*o*) Duke, 135.

(*p*) Duke, 135.

(*q*) *Attorney-General* v. *Earl of Lonsdale*, 1 Sim. 105.

(*r*) *Whicker* v. *Hume*, 1 De G. M. & G. 506; 7 H. L. C. 124; cf. *President of the United States of America* v. *Drummond*, cited 7 H. L. C. 155.

(*s*) *Jesus College Case*, Duke, 78; *Attorney-General* v. *Sidney Sussex College*, L. R. 4 Ch. 722; 38 L. J. N. S. Ch. 650.

limited to inhabitants of a particular place (*t*), and among such inhabitants preference may be given to a certain class of inhabitants, as to freemen of a borough (*u*), or to the kin of the founder (*x*). Charities which come under this head need not necessarily be for teaching purposes, but may be for the advancement of learning in other ways, *e.g.*, by research, as in the case of the Royal Society and the Royal Geographical Society, which are both charitable (*y*); by the publication of books, if not subversive of religion or morality (*z*), or by a free museum or library for the public (*a*), but not where the library or museum is private, being founded by the subscriptions of individuals (*b*). Gifts to a college at one of the universities, or for the foundation of a fellowship (*c*), are charitable, whatever the purposes to which they may afterwards be put by the college or fellow (*d*); but where the gift was expressed to be not for the advancement of education, but for the keeping up of the testator's house, there was no charity (*e*).

Advancement of religion.

§ 10.—III. The advancement of religion is a charitable use, though it is not strictly analogous to any of the uses

(*t*) *Ross* v. *Charity Commissioners*, 7 App. Cas. 463.

(*u*) *In re Nettle's Charity*, L. R. 14 Eq. 434.

(*x*) *Etherington* v. *Wilson*, L. R. 1 Ch. D. 160; 32 L. T. N. S. 789.

(*y*) *Beaumont* v. *Oliveira*, L. R. 4 Ch. 309; 20 L. T. N. S. 53; 17 W. R. 269; 38 L. J. N. S. Ch. 239; cf. *The University of London* v. *Yarrow*, 1 De G. & J. 72; 13 Jur. N. S. 421; 26 L. J. N. S. Ch. 430.

(*z*) *Thompson* v. *Thompson*, 1 Coll. 395; 8 Jur. 839; *Thornton* v. *Howe*, 8 Jur. N. S. 663; 10 W. R. 642; 6 L. T. N. S. 525; 31 Beav. 14; 31 L. J. N. S. Ch. 767.

(*a*) *Trustees of the British Museum* v. *White*, 2 S. & S. 594.

(*b*) *Carne* v. *Long*, 2 De G. F. & J. 75; 8 W. R. 570; 29 L. J. N. S. Ch. 503; 6 Jur. N. S. 639; 2 L. T. N. S. 552, following *Thompson* v. *Shakespeare*, 1 De G. F. & J. 399; 8 W. R. 265; 6 Jur. N. S. 281; 29 L. J. N. S. Ch. 276; 2 L. T. N. S. 479.

(*c*) Duke, 77 and 78.

(*d*) *Attorney-General* v. *Sidney Sussex College*, L. R. 4 Ch. 722; 38 L. J. N. S. Ch. 656.

(*e*) *Attorney-General* v. *Whorwood*, 1 Ves. sen. 534.

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mentioned in the statute. The uses to which it is most allied are those for the repair of a church, and for the advancement of learning; and, according to Wickens, V.-C., religious services are only charitable when they tend directly or indirectly towards the instruction or edification of the public (*f*). It follows that a gift for a private chapel, whether belonging to the Established Church or not, cannot be charitable (*g*), even though by Act of Parliament (*h*) no chapel can be used for divine service without the public having access to it.

Under the head of charities for the advancement of religion will come endowments,

(1) For reparation, adornment or furnishing of a church (*i*) —as for keeping the chimes of a church in repair and for the payment of singers (*k*), for keeping up an organ and furnishing a stipend to the organist (*l*), for building St. Paul's after the Great Fire (*m*), or for a Quaker meeting-house and burial ground (*n*). On the other hand, a gift for keeping a tomb or tombstone in a churchyard in repair is not charitable, and is void as creating a perpetuity (*o*),

(*f*) *Cocks* v. *Manners*, L. R. 12 Eq. 574; 19 W. R. 1055; 24 L. T. N. S. 869.

(*g*) *Milligan* v. *Mitchell*, 4 L. J. N. S. Ch. 281; cf. *Herbert* v. *Westminster*, 1 P. Wms. 773; *Ex parte Pearson*, 6 Price, 214; Finlason's Law of Charitable Trusts, p. 17.

(*h*) 52 Geo. III. c. 155, s. 11.

(*i*) *Attorney-General* v. *Ruper*, 2 P. Wms. 125; *Attorney-General* v. *Vivian*, 1 Russ. 226; *In re Donington-on-Baine*, 6 Jur. N. S. 290.

(*k*) *Turner* v. *Ogden*, 1 Cox, 316. See, however, *Attorney-General* v. *Oakaver*, cited 1 Ves. sen. 535.

(*l*) *Attorney-General* v. *Oakaver*, *supra*.

(*m*) 1 Swanst. 297; *Attorney-General* v. *Heelis*, 2 S. & S. 76.

(*n*) *Doe* d. *Thompson* v. *Pitcher*, 6 Taunt. 359; *Attorney-General* v. *Fowler*, 15 Ves. 85.

(*o*) *Durour* v. *Motteux*, 1 Ves. sen. 320; *Dawson* v. *Small*, L. R. 18 Eq. 114; 43 L. J. N. S. Ch. 406; 30 L. T. N. S. 252; 22 W. R. 514; *In re Williams*, L. R. 5 Ch. D. 735; 25 W. R. 689; 36 L. T. N. S. 939; *In re Birkett*, L. R. 9 Ch. D. 576; 27 W. R. 164; 47 L. J. Ch. 846; 39 L. T. N. S. 418; *In re Vaughan*, *Vaughan* v. *Thomas*, L. R. 33 Ch. D. 187; *Hoare* v. *Osborne*, L. R. 1 Eq. 585; 14 W. R. 383; 14 L. T. N. S. 9;

though repair of a monument within the church *may* be a charitable use, as forming part of the general repairs of the church (*p*).

A trust for the erection of a tomb, though not a charity, is valid, as it does not create a perpetuity (*q*).

Repair of the churchyard itself is charitable (*r*), and so the repair of a parsonage (*s*).

(2) For providing ministers for the service of religion—as for a minister for preaching (*t*), for a pension to a perpetual curate (*u*), for unbeneficed curates (*x*), for augmentation of livings (*y*), for the benefit of the ministers of Protestant Dissenters and Quakers (*z*), for a Gaelic minister in London (*a*).

12 Jur. N. S. 243; 35 L. J. N. S. Ch. 345; *Lloyd* v. *Lloyd*, 2 Sim. N. S. 255; *Rickard* v. *Robson*, 31 Beav. 244. It was held in some earlier cases that gifts for the repair of a *family* tomb were charitable: see *Doe* d. *Thompson* v. *Pitcher*, 3 M. & S. 407; 6 Taunt. 359; *Jones* v. *Mitchell*, 1 S. & S. 290. These cases, however, would seem to be overruled by *Fisk* v. *Attorney-General*, L. R. 4 Eq. 521; 15 W. R. 1200; *Dawson* v. *Small*, L. R. 18 Eq. 114; *In re Vaughan*, *Vaughan* v. *Thomas*, 33 Ch. D. 187. Even a trust for the repair of tombs in a public cemetery has been held void (*Hunter* v. *Bullock*, L. R. 14 Eq. 45; 20 W. R. 460; 26 L. T. N. S. 349; 41 L. J. N. S. Ch. 637), though there seems no reason why it should not have been held good, as of public utility.

(*p*) *Hoare* v. *Osborne*, L. R. 1 Eq. 585; 14 W. R. 383; 14 L. T. N. S. 9; 12 Jur. N. S. 243; 35 L. J. N. S. Ch. 345; cf. *Willis* v. *Brown*, 2 Jur. 987.

(*q*) *Mitford* v. *Reynolds*, 1 Ph. 185; 12 L. J. N. S. Ch. 40. See *Mellick* v. *President of the Asylum*, Jac. 180; *Adnam* v. *Cole*, 6 Beav. 353; *Trimmer* v. *Danby*, 25 L. J. N. S. Ch. 424, where the question was of a monument to be erected in a church.

(*r*) *Doe* d. *Thompson* v. *Pitcher*, 6 Taunt. 359; 3 M. & S. 407; *In re Vaughan*, *Vaughan* v. *Thomas*, L. R. 33 Ch. D. 190.

(*s*) *Attorney-General* v. *Bishop of Chester*, 1 Bro. C. C. 444 (marginal note).

(*t*) *Pember* v. *Inhabitants of Knighton*, Duke, 82 and 109.

(*u*) *Attorney-General* v. *Parker*, 1 Ves. sen. 43.

(*x*) *Pennington* v. *Buckley*, 6 Hare, 453.

(*y*) *Attorney-General* v. *Brereton*, 2 Ves. sen. 426.

(*z*) *Attorney-General* v. *Cock*, 2 Ves. sen. 275.

(*a*) *Attorney-General* v. *Stewart*, L. R. 14 Eq. 17; 20 W. R. 570; 26 L. T. N. S. 419.

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(3) For the advancement of particular religions or sects. At the time when the Statute of Elizabeth (43 Eliz. c. 4) was passed, no gifts for religious uses other than those of the Established Church were legal and charitable, the Act of Uniformity (1 Eliz. c. 2) having made the doctrines of that Church part of the law of the land. The Toleration Acts, beginning with 1 Will. & Mary, c. 18, and ending with 9 & 10 Vict. c. 59, have gradually removed most of such restrictions, and made religious uses equally legal and proper objects of charity, whether Roman Catholic, Trinitarian Protestant Dissenting, Unitarian, or Jewish (*b*). Religions opposed to Christianity, with the exception of the Jewish, are still apparently illegal (*c*).

Monastic orders are also still illegal, the Roman Catholic

(*b*) By 1 Will. & Mary, c. 18, Protestant Trinitarian Dissenters taking the oath of allegiance were exempted from the penalties of nonconformity; by 19 Geo. III. c. 44, the ministers of Protestant Trinitarian Dissenting bodies are exempted from declaring their assent to the Thirty-nine Articles; by 52 Geo. III. c. 155, Protestant Trinitarian Dissenters are relieved from taking the oath; by 53 Geo. III. c. 160, the penalties against denial of the doctrine of the Trinity were removed, and Unitarians were thus placed on the same footing with other Protestant Dissenters; by 31 Geo. III. c. 32, Roman Catholics taking the oath of allegiance are exempted from penalties and certain of their disabilities; by 10 Geo. IV. c. 7, the disabilities of Roman Catholics were further removed; 2 & 3 Will. IV. c. 115, put Roman Catholics on the same footing as Protestant Dissenters in respect to their schools, places for religious worship, education, and charitable purposes, and the property held therewith; finally, by 9 & 10 Vict. c. 59, the disabilities imposed upon Jews were removed, and they were made subject to the same laws as Protestant Dissenters in respect to their schools, places for religious worship, education, and charitable purposes, and the property held therewith; the same statute also repealed a number of acts directed against the Roman Catholic religion, which had hitherto been unrepealed. The question of superstitious uses, by the intermixture of which Roman Catholic charities for a legal purpose were very frequently rendered void, was dealt with by 23 & 24 Vict. c. 134, which permitted the separation of the superstitious from the good charitable use.

(*c*) *Briggs* v. *Hartley*, 14 Jur. 683; 19 L. J. N. S. Ch. 416.

Relief Acts (31 Geo. III. c. 32, s. 17, and 10 Geo. IV. c. 7, ss. 28, 29) having continued the existing prohibition of such institutions, which was again confirmed by 23 & 24 Vict. c. 134, s. 7. The prohibition is held to apply to monastic bodies settling in the realm after as well as before the passing of the act, and therefore a trust for the establishment as well as for the benefit of such a body is void (*d*).

A gift to a body of nuns may be charitable if they are engaged in charitable work (*e*), and are a permanent institution (*f*). If they are not a permanent institution, the gift may be valid as a gift out and out to the individuals composing the society (*g*).

Prayers for the dead.

§ 11. A gift for masses for souls and prayers for the dead is generally said to be void as a superstitious use, under 23 Hen. VIII. c. 10, and 1 Edw. VI. c. 14.

By 23 Hen. VIII. c. 10, it was enacted that all uses for parish churches, chapels, churchwardens, guilds, fraternities, commonalties, companies or brotherhoods, erected and made of devotion or by common assent of the people without any corporation, and also to have obits perpetual, or a continual service of a priest for ever, or for threescore or fourscore years, that shall be devised, covenanted, made or in anywise ordained after the 1st day of March in the 23rd year of the reign of King Henry VIII., by any feoffee, recoverer or conisee, or by any other person or persons to

(*d*) *Liston* v. *Keegan*, 9 L. R. Ir. 531 (bequest on secret trust to a priest of the order of St. Vincent de Paul at P.); *Sims* v. *Quinlan*, 17 Ir. Ch. Rep. 43 (trust for the maintenance and education of two priests of the order of St. Dominick); *Murphy* v. *Cheevers*, 17 L. R. Ir. 205 (bequest to the Christian Brothers, a body bound by monastic vows).

(*e*) *Cocks* v. *Manners*, L. R. 12 Eq. 574; 19 W. R. 1055; 24 L. T. N. S. 869.

(*f*) *Stewart* v. *Green*, 5 Ir. R. Eq. 470.

(*g*) *In re Delany's Estate*, 9 L. R. Ir. 226; cf. *Stewart* v. *Green*, and the case of *Henrion* v. *Bonham* there cited.

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whose use any such feoffee, recoverer or conisee shall be seised of any manors, lands, tenements or hereditaments, or of the issues, revenues and profits of them, should be utterly void; provided that it should be lawful to any person, being seised of any manors, lands, tenements, or hereditaments to his own proper use, or having feoffees, recoverers or conisees to his use, to make, ordain or devise, or cause to be made, ordained or devised, any of the uses, intents or purposes above specified, in such manner as they might have done before the making of the act; but so that no such uses, intents or purposes to be so made, ordained or devised after the said first day of March should be in anywise made, ordained, devised or appointed to continue above the term of twenty years next after the making or beginning of any such uses, intents or purposes (*h*).

By the statute commonly known as the Statute of Superstitious Uses (1 Edw. VI. c. 14), it was enacted that all manors, lands, tenements, rents or other hereditaments, by any manner of assurance, conveyance, will, devise or otherwise had, made, suffered, knowledged or declared, given, assigned, limited or appointed to the finding of any priest, to have a continuance for ever, and wherewith or whereby any priest was sustained, maintained or found within five years next before the first day of the present Parliament (which were not in the actual and real possession of the then late king, nor in the actual and real possession of the then king), and also all annual rents, profits and emoluments at any time within five years next before the beginning of the then present Parliament, employed, paid or bestowed toward or for the maintenance, supportation or finding of any stipendiary priest, intended by any act or writing to have continuance for ever, should be adjudged

(*h*) Sects. 2 and 3.

and deemed and also be in the very actual and real possession and seisin of the king, his heirs and successors for ever, without any office or other inquisition thereof to be had or found.

In a later clause, on which the modern doctrine of superstitious uses mainly rests, it is enacted that the king, his heirs and successors, from the feast of Easter then next, should have, hold, perceive and enjoy for ever all lands, tenements, rents and other hereditaments, which by any manner of assurance, conveyance, will, wills, devise or otherwise, at any time *theretofore* had, made, suffered, knowledged or declared, were given, assigned or appointed to go or to be employed wholly to the finding or maintenance of any anniversary or obit, or other like thing, intent or purpose, or of any light or lamp in any church or chapel to have continuance for ever, which had been kept or maintained within five years next before the first day of the then present Parliament (*i*). Where but part of the revenues of such hereditaments had been given to the uses mentioned in any one year within the same period of five years, the king was to have such part as a rent-charge, to be paid half-yearly and recovered by distress (*k*). So, where money had been given by a corporation to the finding, maintenance or sustentation of any priest or priests, of any anniversary or obit, lamp, light or lights or other like thing, in any one year within the five years next before the beginning of the then present Parliament, the king was to have it as a rent-charge, to be paid yearly and recovered by distress (*l*). By 1 Geo. I. c. 50, commissioners were

(*i*) Sect. 5.

(*k*) Sect. 6.

(*l*) Sects. 7 and 8. See the entire act, which is obviously not specially directed against masses for souls or prayers for the dead; and is in the second place entirely retrospective, referring, as it does, throughout to what had existed in the preceding five years.

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appointed to inquire of estates given to superstitious uses, these being vested in the Crown for the use of the public.

These acts do not apply to Ireland, where such a gift, not being charitable, is void only if it purports to create a perpetuity; and a bequest to celebrate masses has been held good for the lives of the officiating priests named, and the survivors of them (*m*). The Charitable Donations and Bequests Act (*n*) speaks, in sect. 16, of pious as well as charitable uses, and a devise in trust for "masses for the repose of my soul" has been held a pious use within the meaning of that section, so that the death of the testator within three months from the date of the execution of his will avoided the gift (*o*). The question with regard to England is covered by judicial decisions, which have declared such uses, ever since the Toleration Acts, to be still void, as being within the spirit if not within the letter of the Statute of Superstitious Uses. Otherwise it would have seemed that here, too, such uses are merely not charitable, and are void only if there is an attempt to create a perpetuity.

It is to be noted that the doctrine of superstitious uses applies to such uses equally, whether they appertain to the Roman Catholic religion or to any other, *e.g.*, the Jewish (*p*), though the doctrine is necessarily of most importance in connection with Roman Catholic charities.

Before the passing of the Roman Catholic Relief Act (10 Geo. IV. c. 7), and possibly up to the passing of the

(*m*) *Dorrian* v. *Gilmour*, 15 L. R. Ir. 69; *Dillon* v. *Reilly*, 10 Ir. R. Eq. 152.

(*n*) 7 & 8 Vict. c. 97, s. 16.

(*o*) *Boyle* v. *Boyle*, 11 Ir. R. Eq. 433; cf. *Robb* v. *Dorrian*, 11 Ir. R. C. L. 292.

(*p*) *In re Michel*, 28 Beav. 39. On the same analogy, a trust for the performance of religious ceremonies to the founder is not charitable: *Mayor of Lyons* v. *East India Co.*, 1 Moore, P. C. 177; *Yeap Cheah Neo* v. *Ong Cheng Neo*, L. R. 6 P. C. 395.

Act 2 & 3 Will. IV. c. 115, which removed a still-existing doubt how far Roman Catholics were relieved from disabilities in respect of their right of holding property given for the purposes of education and religious instruction, by placing Roman Catholics on the same footing as Protestant Dissenters "in respect to their schools, places for religious worship, education, and charitable purposes in Great Britain and Ireland, and the property held therewith," gifts for masses for souls and for prayers for the dead by Roman Catholics would, like any other gifts for the use of the Roman Catholic religion, be void as against public policy, and there was no need to refer for the invalidation of such gifts either to 23 Hen. VIII. c. 10, which was limited to land, and only forbade grants of land to unincorporate bodies for superstitious uses for more than twenty years, or to 1 Edw. VI. c. 14, which, on the face of it, was entirely retrospective in its operation (*q*). In the cases mentioned in Duke (*r*) it is not generally very clear whether the gift took place before the Act of Edw. VI. or subsequently to it; but in each case where a date is assigned to the gift, it is prior to the act, and the case therefore comes directly within its purview.

The same is true of the case of *Attorney-General* v. *Fishmongers' Co.* (*s*), where lands had been left in 1513 in trust (*inter alia*) for securing prayers for the souls of the dead. In *West* v. *Shuttleworth* (*t*), however, it was held that the Statute of Edw. VI., while relating directly only to superstitious uses of a particular description then existing, at the same time established the illegality of certain gifts, and that the giving of legacies to priests to pray for the soul of the

(*q*) See judgment of Sir Wm. Grant in *Cary* v. *Abbot*, 7 Ves. 496.

(*r*) Duke, pp. 86—95; cf. *Adams and Lambert's Case*, Co. Rep. Pt. 4, 104 b.

(*s*) 2 Beav. 151.

(*t*) 2 M. & K. 684.

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donor is, in accordance with the cases collected in Duke (*u*), within the superstitious uses intended to be suppressed by that statute. The gift being for the testator's own soul, it was held that not even a general charitable intention was shown by the gift, and the property must therefore go to the next of kin (*x*). In the later case of *Heath* v. *Chapman* (*y*), Vice-Chancellor Kindersley explained the Statute of Edw. VI. as assuming that the uses therein mentioned were void, and declaring that property given to such uses should belong to the Crown (*z*). At the same time, if we ask why such uses were assumed to be superstitious and void, the answer must be, that they were superstitious and void in exactly the same way that all gifts for the uses of the Roman Catholic religion, or any religion other than the Established, were superstitious and void. It would therefore seem that the Roman Catholic religion being no longer illegal, so-called superstitious uses should be no longer illegal, and prayers for the dead no more than the many other uses which were before the Toleration Acts illegal. Prayers for the dead, as an Ecclesiastical Court held, are not even contrary to the doctrine of the Established Church (*a*), and it is therefore difficult to see why they should be selected to be the sole relic of the law of superstitious uses as applied to Roman Catholic charities, and should be spoken of as contrary to the policy of the law. It has (*b*) been argued that the Act 2 & 3 Will. IV. c. 115, places Roman Catholics on the same footing as Protestant Dissenters only in respect of their schools, places for religious worship, education, and charitable purposes, and the property held therewith, and

(*u*) Duke, pp. 86—95.

(*x*) See, however, *Rex* v. *Lady Portington*, 1 Salk. 162.

(*y*) 2 Drew. 417.

(*z*) See also *Re Blundell's Trusts*, 10 W. R. 34; 5 L. T. N. S. 337; 8 Jur. N. S. 5; 31 L. J. N. S. Ch. 52.

(*a*) *Breeks* v. *Woolfrey*, 1 Curt. Eccl. Rep. 880.

(*b*) Jarman on Wills, vol. 1, p. 205.

that prayers for the dead and the like, not coming under either of those heads, the old law with regard to them continues. The effect of this would be that private prayers for the dead are a void use, either as not coming under the head of charitable uses, within the purview of the Statute of Elizabeth, and therefore not exempt from the law with regard to perpetuities, or as contrary to the spirit of the Statute of Edw. VI. Gifts for prayers for the dead can scarcely be void as made in support of a worship contrary to the form established, seeing that such prayers themselves are no longer regarded as illegal. As to public masses and prayers for the dead, these would naturally come within the scope of the words "in respect of their places for religious worship." The only English case on the subject later than *Heath* v. *Chapman* is *Re Blundell's Trusts* (*c*) in 1862, which followed *West* v. *Shuttleworth* in deciding that gifts for masses for the soul of the founder are unlawful, though in this case the gift was not simply for masses, but to the officiating priests of certain chapels on condition that they celebrated so many masses for the soul of the founder. The latest statute which deals with Roman Catholic charities (23 & 24 Vict. c. 134) gives countenance to the doctrine of *West* v. *Shuttleworth* and *Heath* v. *Chapman*, by providing (*d*) that Roman Catholic charities for lawful purposes are not to be invalidated by the addition of trusts for superstitious uses, or uses otherwise unlawful, but that the property may be apportioned and the whole applied to lawful purposes (*e*). The term "superstitious uses" is not defined in that statute, but is understood to

(*c*) 10 W. R. 34; 5 L. T. N. S. 337; 8 Jur. N. S. 5; 31 L. J. N. S. Ch. 52.

(*d*) Sect. 1.

(*e*) See the remarks of Romilly, M. R., in *In re Michel*, 28 Beav. 39; and *post*, p. 62; also p. 60, on the application *cy-près* of trusts for superstitious uses.

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refer to prayers for the dead, which are in that interpretation, by direct legislation as well as on the reported cases, still illegal in England, not only when they tend to create a perpetuity, but always.

Other religious uses.

§ 12.—(4) Instruction in religion comes very obviously within the analogy of the educational uses mentioned in the Statute of Elizabeth (43 Eliz. c. 4). Before the Toleration Acts such instruction could be only in the doctrines of the Established Church; it may now be in the doctrines of any religion to which the Toleration Acts apply (*f*).

A trust for the publication or distribution of religious books would be charitable, as tending to instruction in religion (*g*), but a trust to secure a prize for and publication of the best essay on natural theology treated as a science has been held to be void as not consistent with the Christian religion (*h*). In a case decided in 1828, it was held that a trust for the publication of a treatise advocating the supremacy of the Pope was void as against the policy of the law (*i*); *quære*, whether the Catholic Relief Acts (10 Geo. IV. c. 7, and 2 & 3 Will. IV. c. 115) would affect in any way this decision.

(5) A gift to religious uses generally is charitable—as "to and amongst certain institutions, or to any other religious institution or purpose" (*k*), or "in the service of my Lord and Master" (*l*). So, according to the civil law, a

(*f*) *Shore* v. *Wilson*, 9 Cl. & F. 355; 11 Sim. 592; 7 Jur. 781.

(*g*) *Attorney-General* v. *Stepney*, 10 Ves. 22.

(*h*) *De Themmines* v. *De Bonneval*, 5 Russ. 288; but cf. *Thornton* v. *Howe*, 31 Beav. 14, where a trust for the propagation of the sacred writings of Joanna Southcote was upheld as charitable.

(*i*) *Briggs* v. *Hartley*, 14 Jur. 683; 19 L. J. N. S. Ch. 416.

(*k*) *Wilkinson* v. *Lindgren*, L. R. 5 Ch. 570; 18 W. R. 961.

(*l*) *Powerscourt* v. *Powerscourt*, 1 Molloy, 616; cf. *Townsend* v. *Carus*, 3 Hare, 257.

legacy "to God" was pious and charitable (*m*). A gift to a religious person is charitable if he is described by his office (*n*).

Public purposes.

§ 13.—IV. The advancement of objects of general public utility is a charitable use, by analogy with the uses mentioned in the statute, "for repair of bridges, ports, havens, causeways, churches, sea-banks, and highways," and for "relief, stock or maintenance of houses of correction," and that though the object be beneficial to the rich as well as to the poor. Thus, gifts for "widening, paving, lighting, watching, cleansing and regulating" the streets of a town (*o*); to supply a town with water (*p*); "for the benefit and ornament of a town" (*q*); "for the use or benefit of a borough, town, or of the inhabitants thereof, or of the institutions in the said borough" (*r*); to establish a lifeboat (*s*); to the Chancellor of the Exchequer for the benefit of Great Britain (*t*); for repair of highways (*u*); for a public botanical garden (*x*); to the Government of Bengal, to be applied to charitable, beneficial, and public works for the exclusive benefit of the native inhabitants (*y*); or for the discharge of the tax of the commonalty to King Henry the Seventh and his successors (*z*);—are

(*m*) 2 Domat, 169.

(*n*) *Thornber* v. *Wilson*, 3 Drew. 245; cf. *Doe* d. *Phillips* v. *Aldridge*, 4 T. R. 264; *Morice* v. *Bishop of Durham*, 10 Ves. 521; *Gibson* v. *Irish Church Representative Body*, 9 L. R. Ir. 1.

(*o*) *Attorney-General* v. *Heelis*, 2 S. & S. 67; cf. *Howse* v. *Chapman*, 4 Ves. 542.

(*p*) *Jones* v. *Williams*, Amb. 651.

(*q*) *Mayor of Faversham* v. *Ryder*, 5 De G. M. & G. 350.

(*r*) *Mayor, &c. of Wrexham* v. *Tamplin*, 21 W. R. 768; 28 L. T. N. S. 761.

(*s*) *Johnston* v. *Swann*, 3 Mad. 457.

(*t*) *Nightingale* v. *Goulbourn*, 2 Ph. 594.

(*u*) *Collison's Case*, Hob. 136.

(*x*) *Townley* v. *Bedwell*, 6 Ves. 194.

(*y*) *Mitford* v. *Reynolds*, 1 Ph. 185.

(*z*) *Attorney-General* v. *Bushby*, 24 Beav. 299.

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charitable. So, the right to dredge for oysters may be held by a municipal corporation on a charitable trust for the inhabitants (*a*). Gifts for the prevention of cruelty to animals (*b*), or for the cure of the diseases of animals (*c*), may be charitable, as being for objects of public utility, but the animals must be animals useful to man (*d*).

Essentials of a charity.

§ 14. A charitable trust may be created by the most general words, but it must be expressed to be for charitable or public purposes (*e*), otherwise the trust will be void for uncertainty (*f*).

A secret trust for charitable purposes may sometimes be established, where there is none expressed in the gift; in which case, if acceptance of the trust can be brought home to the donee or legatee, it is enforced against him, and the gift is treated as coming within the operation of the law of charities (*g*).

A trust *primâ facie* charitable may be declared not charitable:

(A.) As against public policy, *e. g.*, to discharge prisoners imprisoned for non-payment of fines under the game laws (*h*), for the political restoration of the Jews to their

(*a*) *Goodman* v. *Mayor of Saltash*, 7 App. Cas. 633.

(*b*) *Tatham* v. *Drummond*, 10 Jur. N. S. 1087; 34 L. J. Ch. 1; 13 W. R. 61; 11 L. T. N. S. 324; 4 De G. J. & Sm. 484; cf. *Marsh* v. *Means*, 3 Jur. N. S. 790; 5 W. R. 815.

(*c*) *University of London* v. *Yarrow*, 1 De G. & J. 72; 3 Jur. N. S. 421; 26 L. J. Ch. 430.

(*d*) *University of London* v. *Yarrow*, *supra*. See, however, *Marsh* v. *Means*, *supra*.

(*e*) *Ellis* v. *Selby*, 7 Sim. 352; 1 My. & Cr. 286; *Dolan* v. *Macdermot*, L. R. 3 Ch. 676; Introduction, Part III. *post*, p. 62.

(*f*) *In re Jarman's Estate*, *Leavers* v. *Clayton*, L. R. 8 Ch. D. 584; 47 L. J. N. S. Ch. 675; 26 W. R. 907; 39 L. T. N. S. 89; cf. *Browne* v. *King*, 17 L. R. Ir. 448.

(*g*) *Jones* v. *Badley*, 15 W. R. 297; L. R. 3 Eq. 635; 15 L. T. 497; on appeal, L. R. 3 Ch. 362; *O'Brien* v. *Tyssen*, L. R. 28 Ch. D. 372; 33 W. R. 428; 54 L. J. N. S. Ch. 284; 51 L. T. N. S. 814; *Lomax* v. *Ripley*, 3 Sm. & G. 48.

(*h*) *Thrupp* v. *Collett*, 26 Beav. 125.

own land (as tending to create a revolution in a friendly country) (*i*). On the same principle, where a testator had created a trust for a socialist school (*k*), and for the appointment of a literary man to extend the knowledge of the doctrines contained in the testator's books (*l*), the court in each case directed an inquiry as to what the opinions alluded to really were, and whether they were against public policy (*m*).

(B.) As being for the benefit of private individuals merely (*n*), *e. g.*, for a friendly society (*o*), though where the benefits of the friendly society only accrue in case of poverty, a gift to the use of such a society will be charitable (*p*). So, a gift of income to the trustees of "The Sedgefield Mechanics' Institute of Literature and Science," to be applied by them for the benefit of the said institution in such manner as they should consider most advantageous for the instruction and benefit of the members of the said institution (*q*), and a gift to a Sacred Harmonic Society, supported by the subscriptions of the members, and receipts from the concerts given by it (*r*), have been held not charitable. Moreover, all institutions of this kind, supported by voluntary contributions, are specially

(*i*) *Habershon* v. *Varden*, 4 De G. & Sm. 467.

(*k*) *Russell* v. *Jackson*, 10 Hare, 204.

(*l*) *Thompson* v. *Thompson*, 1 Coll. 395.

(*m*) See also *Briggs* v. *Hartley*, 14 Jur. 683; 19 L. J. N. S. Ch. 416; *De Themmines* v. *De Bonneval*, 5 Russ. 288; *Thornton* v. *Howe*, 31 Beav. 14.

(*n*) See *Ommaney* v. *Butcher*, T. & R. 270; *Liley* v. *Hay*, 1 Hare, 580.

(*o*) *In re Clark's Trusts*, L. R. 1 Ch. D. 497; 24 W. R. 233; 45 L. J. N. S. Ch. 194.

(*p*) *Spiller* v. *Maude*, L. R. 32 Ch. D. 158, n.; *Pease* v. *Pattinson*, L. R. 32 Ch. D. 154; 34 W. R. 361; 54 L. T. N. S. 209; 55 L. J. N. S. Ch. 617; cf. *Hall* v. *Derby Sanitary Authority*, 16 Q. B. D. 163.

(*q*) *In re Sheraton's Trusts*, W. N. (1884) p. 174; cf. *Re Dutton*, 4 Ex. D. 54.

(*r*) *In re Allsop's Estate*, *Gell* v. *Carver*, W. N. (1884) p. 196.

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exempted from the operation of the Charitable Trusts Acts (*s*).

A gift for a school kept by a private individual, and mainly supported at his expense, has also been held not charitable, although the object of the keeper of the school was charitable or philanthropic (*t*).

Sources from which charitable funds are derived.

§ 15. Whether the question of dedication to a charitable use within the statute 43 Eliz. c. 4, depends on the source from which the funds are derived, or on the purpose to which they are to be applied, has been the subject of directly contrary decisions. According to Sir John Leach, in *Attorney-General* v. *Heelis* (*u*), "funds supplied from the gift of the Crown, or from the gift of the Legislature, or from private gift, for any legal, public or general purpose, are charitable funds to be administered by courts of equity;" but he continues, "I am of opinion that it is the source from which the funds are derived, and not the purpose to which they are dedicated, which constitutes the use charitable. Where an Act of Parliament passes for paving, lighting, cleansing and improving a town, to be paid for wholly by rates or assessments to be levied upon the inhabitants of that town, the funds so raised, being in no sense derived from bounty or charity, in the most extensive sense of that word, are not charitable funds to be administered by this court." The Vice-Chancellor, in *Attorney-General* v. *Eastlake* (*v*), explains this judgment to mean that, "if you raise money for a purpose which in itself might be a charitable purpose, by taxation from the very persons that would be benefited by that which would be a charity if it was a gift from another—if you raise it

(*s*) Charitable Trusts Act, 1853, s. 62, *post*.

(*t*) *Clark* v. *Taylor*, 1 Drew. 642.

(*u*) 2 S. & S. 76.

(*v*) 11 Hare, 205.

by taxation from these parties, then you are only taxing these parties to do good to themselves." In the teeth of this judgment he decided that where, by a local act, certain commissioners were authorized to levy rates for paving, lighting, watching, widening, and improving streets in a town, the object being beneficial not only to the inhabitants subjected to the rate, but also to all other persons having occasion to visit or pass through the town, the purpose was public and charitable within the meaning of the Statute of Charitable Uses. "I cannot see," he said, "that the source from which these moneys are here derived, namely, from taxation, can make any difference as to the charitable or public nature, and which would be attributable to the funds if they proceeded from a more limited sphere of bounty; and if there be no distinction on that ground, the Attorney-General is the proper person to represent those who are interested in that general and public, or charitable purpose."

This decision follows very closely the judgments of Lord Eldon in *The Attorney-General* v. *Brown* (*w*), and *The Attorney-General* v. *Mayor, &c. of Dublin* (*x*). In the former case he held that where, by a local act, certain individuals were appointed to repair and maintain the groynes already built for the defence of a town against irruptions of the sea, and if necessary to build new groynes or walls, and were authorized to levy a sum not exceeding three shillings for every chaldron of coal, &c., landed on the beach, or otherwise brought into the town, the Attorney-General could sue by information in respect of the misappropriation of the duty, the parliamentary grant of such a duty, in aid of the pecuniary inability of the inhabitants to protect the town, being a gift to a charitable use. He

(*w*) 1 Swanst. 265 *et seq.* (*x*) 1 Bligh, N. S. 312.

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based his judgment in part on the direct authority of Sir Francis More (who probably himself drafted the statute of Elizabeth), in his commentary on the statute contained in Duke's "Law of Charitable Uses," where it is said, "An imposition granted upon commodities imported or transported, to be employed upon repair of ports or havens, where they shall land, is a charitable use, and within this statute" (*y*). In the second case Lord Eldon, who, with Lord Redesdale, delivered the judgment of the House of Lords, held that a corporation which, by a local act, was enabled to tax the owners or occupiers of houses in the town, for supplying themselves with water, could be sued by the Attorney-General for Ireland in the Irish Court of Chancery for misapplication of sums raised under these powers. He adhered to the opinion expressed by him in the earlier case, but observed that its authority was considerably weakened by the opinion given by Sir John Leach in *Attorney-General* v. *Heelis* (*z*).

A decision clearly at variance with the doctrine enunciated in *Attorney-General* v. *Eastlake* (*a*), that it is the purpose to which funds are to be applied, and not the source from which they come, that makes them charitable, was given by V.-C. Bacon in a recent case. An estate had been purchased out of the common moneys belonging to the Town Ward, and conveyed to trustees upon trust to permit the alderman, deputy, and common councilmen for the said ward for the time being, out of the common moneys belonging to the said ward which then were or might from time to time be remaining in the hands of the treasurer for the time being of the said ward, to pull down, alter, and remove the messuage then on the land and all the appurtenances, and in its place, out of the funds afore-

(*y*) Duke, 135. (*z*) 2 S. & S. 76 (*a*) 11 Hare, 205.

said, to erect a more commodious building, with suitable watch-house and all necessary and convenient offices. No charitable trust, the Vice-Chancellor held, was thereby created, and therefore the consent of the Charity Commissioners to a sale of the estate was not required (*b*). It might have been thought that the words of the conveyance to trustees amounted to a declaration of a public and therefore charitable trust, and that the fact that the purchase-money of the estate was paid out of common moneys belonging to the ward, and that the public charitable purpose was a purpose connected with the management of the ward, could make no difference whatever. The Vice-Chancellor's judgment, however, would agree very closely with the judgment of Sir John Leach, as explained by the Vice-Chancellor in *Attorney-General* v. *Eastlake* (*c*); the benefit in this case, as in the case of *Attorney-General* v. *Heelis* (*d*), being partly at least for the persons who contributed the funds. The words of V.-C. Bacon were of very wide application, and if taken strictly would prevent any declaration by a purchaser of land, that he held it for a charitable trust, from creating a charity: "With their own money, at that time in their own box, they buy land, and it becomes theirs, and they declare in this instrument a trust of the purpose for which it shall be applied."

The true doctrine would seem to be, that where the purpose for which the trust is declared is a public one, a charitable trust is created, even though the donors themselves may be incidentally or even primarily benefited thereby (*e*).

(*b*) *Finnis and Young* to *Forbes and Pochin* (1), 24 Ch. D. 587; 48 L. T. N. S. 813.

(*c*) *Supra.*

(*d*) 2 S. & S. 76.

(*e*) See *Hall* v. *Derby Sanitary Authority*, 16 Q. B. D. 163.

INTRODUCTION.—PART III.

THE DOCTRINE OF CY-PRES.

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Reason of the doctrine.

§ 1. Perhaps the most important question in modern times in connection with charities is as to the extent of the doctrine of *cy-près* and its application to charities, more or less ancient, whose immediate object has become in course of time obsolete or useless, or as to the usefulness of which opinion has changed.

1. As applied in the alteration of a charity already established.

Charities being under the protection of the State, without which their permanence could not generally be secured, the State has always in consideration of such protection exercised, first through the Attorney-General and Court of Chancery, and latterly through the Charity Commission, a very strict supervision over the management and application of charitable funds. The doctrine of the courts of equity has always been that the intentions of the founder must be rigorously adhered to; when, however, with changing circumstances, it has been found impossible to keep to the letter of his expressed intentions, either through increase in value of the charitable property, or alteration in the character of a locality, or in the habits or condition of the community, the courts have found it necessary to lay down rules by which the intentions, or presumed intentions, of the founder might be followed as closely as possible under such new conditions.

2. As applied in the establishment of a charity.

There are also cases where the intention of the founder being generally charitable, but the object proposed by him impossible from the first as illegal or non-existent, some other charitable object has to be found, to which the endowment may be applied. Under these circumstances,

also, the intentions of the founder are to be followed as closely as possible, and a set of rules for application *cy-près* has been laid down by the courts in their administration of such gifts.

Rules for 2. I. What is a generally charitable intention?

§ 2. To take the second class of cases first, a preliminary question arises, what is evidence of a general charitable intention on the part of a founder sufficient to justify the application of the doctrine of *cy-près?* The rules are as follows:—

(1) Where there is a gift to a particular charitable institution which is non-existent:

(a) If the gift was by will and the charitable institution ceased to exist in the testator's lifetime, there is no application *cy-près*, as no general charitable intention has been shown by the testator (*a*). So if the testator shows an intention only of giving to one special object, and the gift is insufficient for that object, the gift is void altogether (*b*); and so if the bequest is void by the express enactment of a statute (*c*), though this is not the case with the Statute of Superstitious Uses in England (*d*).

(b) If the charity failed after the death of the testator, there will be application *cy-près* by the court, as the testator's charitable intention still existed at his death (*e*). It

(*a*) *In re Ovey, Broadbent* v. *Barrow*, L. R. 29 Ch. D. 560; 33 W. R. 821; 54 L. J. N. S. Ch. 752; 52 L. T. N. S. 849; *Fisk* v. *Attorney-General*, L. R. 4 Eq. 521; 15 W. R. 1200; *Brownjohn* v. *Gale*, W. N. (1869) 133; cf. *Marsh* v. *Means*, 3 Jur. N. S. 790; 5 W. R. 815, where there was a gift to a periodical which had not been published for eleven months before the death of the testator. See also *Clarke* v. *Taylor*, 1 W. R. 476.

(*b*) *Cherry* v. *Mott*, 1 M. & C. 123.

(*c*) *Sims* v. *Quinlan*, 16 Ir. Ch. R. 191.

(*d*) See *post*, p. 60.

(*e*) *In re Clergy Society*, 2 K. & J. 615; *Hayter* v. *Trego*, 5 Russ. 113; but see *In re White's Trusts*, 33 Ch. D. 449; 34 W. R. 771; 55 L. J. N. S. Ch. 701; 55 L. T. N. S. 163, where a gift for a particular purpose, which it was found after the testator's death could not be carried out, was held not applicable *cy-près*.

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may be, however, that the testator has shown a clear intention of giving to a particular institution only, as to a private orphan school, and in this case there will be no application *cy-près* (*f*). When the testator names a particular institution which never existed at all, the gift is treated as generally charitable, and there will be application *cy-près* (*g*).

(c) If, however, there is a chance that the particular object may some day come into existence, the charitable fund will be kept in court to await the event, but for a reasonable and not for an indefinite time (*h*).

(d) Where there is a mistake in the name, and the charity as named is non-existent, there will be an application *cy-près* by the court. If evidence is forthcoming to show what charity was really meant, and the charity meant is in existence, such evidence will be admitted (*i*). If no evidence is forthcoming to show which of two or more charities was intended, the fund will be divided between them (*j*).

(2) When the person or persons named in a will as trustee or trustees of a charitable endowment refuse to take, the charitable intention is not allowed to fail, but

(*f*) *Clark* v. *Taylor*, 1 Drew. 642; 1 W. R. 476; cf. *Russell* v. *Kellett*, 3 Sm. & Giff. 264.

(*g*) *Loscombe* v. *Wintringham*, 13 Beav. 87; *Re Maguire*, L. R. 9 Eq. 632; 18 W. R. 623; 39 L. J. N. S. Ch. 710.

(*h*) *Attorney-General* v. *Bishop of Chester*, 1 Br. C. C. 444; *Sinnett* v. *Herbert*, L. R. 7 Ch. 232; *In re White's Trusts*, 33 Ch. D. 449; *Attorney-General* v. *Downing*, Amb. 571.

(*i*) *In re Briscoe's Trusts*, W. N. (1872) 76; 20 W. R. 355; 26 L. T. N. S. 149, compromised on appeal, 20 W. R. 504; *In re Elizabeth Fearn's Will*, W. N. (1879) 8; *In re Kilvert's Trusts*, L. R. 7 Ch. 170; 20 W. R. 225; 41 L. J. N. S. Ch. 351; 26 L. T. N. S. 221.

(*j*) *Simon* v. *Barber*, 5 Russ. 112; *In re Alchin's Trusts, Ex parte Furley, Ex parte Earl Romney*, L. R. 14 Eq. 230; 20 W. R. 763; 26 L. T. N. S. 824; *Bradshaw* v. *Thompson*, 2 Y. & C. C. 295; *Bennett* v. *Hayter*, 2 Beav. 81; *Gibson* v. *Coleman*, W. N. (1868) 96; 16 W. R. 892, 18 L. T. N. S. 236.

there will be an application by the court *cy-près* (*k*). Where the objects of a charitable gift have been left to the discretion of an executor who declines to exercise the power, or of trustees who refuse the trust, the court will exercise its discretion in their stead (*l*). If the discretion was limited to two named objects, the court will divide the gift equally between them (*m*).

(3) The devotion to charitable purposes must be absolute and immediate, or there will be no application *cy-près* (*n*). The mode of application may, however, be made to depend on future events, though the dedication to charity is absolute and immediate (*o*). The possible remoteness of these future events does not matter. The rules against perpetuities do not prevent pure personal (or real) estate from being given in perpetuity to charity; and when this has once been effectually done, it is neither more nor less alienable, because there is an indefinite suspension or abeyance of its actual application or of its capability of being applied to the particular use for which it is destined. But if the gift in trust for charity, and not merely the mode of application, is conditional upon a future and uncertain event, then it is subject to the rules as to perpetuities (*p*).

(*k*) *New* v. *Bonaker*, L. R. 4 Eq. 655; 15 W. R. 1131; *Attorney-General* v. *Sturge*, 19 Beav. 597.

(*l*) *White* v. *White*, 1 B. C. C. 12; *Attorney-General* v. *Fletcher*, 5 L. J. Ch. N. S. 75.

(*m*) *Attorney-General* v. *Doyley*, 4 Vin. Abr. 485; 2 Eq. C. A. 194; 7 Ves. 58, n.; *Salusbury* v. *Denton*, 3 K. & J. 529.

(*n*) *Chamberlayne* v. *Brockett*, L. R. 8 Ch. 206; 21 W. R. 299; 42 L. J. N. S. Ch. 368; 28 L. T. N. S. 248.

(*o*) *Attorney-General* v. *Bishop of Oxford*, 1 Bro. C. C. 444, n.; *Attorney-General* v. *Bishop of Chester*, 1 Bro. C. C. 444; *Henshaw* v. *Atkinson*, 3 Mad. 306; *Attorney-General* v. *Craven*, 21 Beav. 392; *Sinnett* v. *Herbert*, L. R. 7 Ch. 232; 20 W. R. 270; 41 L. J. N. S. Ch. 388; 26 L. T. N. S. 7.

(*p*) Per Lord Selborne in *Chamberlayne* v. *Brockett*, 8 Ch. 206; cf. *Christ's Hospital* v. *Grainger*, 1 Mac. & G. 460. See, however, *Re White's Trusts*, 33 Ch. D. 449; 55 L. T. N. S. 162; 34 W. R. 771; 55 L. J. N. S. Ch. 701, where a charitable

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I. (4). Establishment of a charity *cy-près*, (1) by the court. (2) by the Crown.

§ 3.—(4) In earlier cases a distinction was observed between gifts which the court or the commissioners under the Statute of Elizabeth (*q*) would administer, and those which the Crown would deal with under its sign manual (*r*). When the gift was to charity generally, it was left to the king to point out the particular charity to which it should be applied, and this would also be the case where a particular use mentioned by the donor being illegal as superstitious, his charitable intentions could not be carried out in that direction (*s*); or where the gift was legal but uncertain in its objects (*t*); for in either case the gift would be construed as a gift to charity in general. Where a particular charity was mentioned, or where trustees of the fund had been appointed, whether a discretion was left to them or to some other person or persons, which they lived to exercise, or not, the court, or in some cases the commissioners appointed under the Statute of Elizabeth, would administer (*u*).

The rule is stated by Lord Eldon (*v*) as follows: "The general principle is that where there is a general indefinite purpose, not fixing itself upon any object, the disposition

legacy, to be applied in the erection of almshouses for a particular class of poor persons, when a proper site could be obtained, was treated as a lapsed legacy on the failure of the particular charitable purpose.

(*q*) 43 Eliz. c. 4.

(*r*) *Attorney-General* v. *Matthews*, 2 Lev. 167; *Clifford* v. *Francis*, Freem. 330; *Attorney-General* v. *Syderfen*, 1 Vern. 224.

(*s*) *Da Costa* v. *De Pas*, Amb. 228; *Rex* v. *Lady Portington*, 1 Salk. 162; *Cary* v. *Abbot*, 7 Ves. 490. See, however, *West* v. *Shuttleworth*, 2 M. & K. 684, where the gift being to Roman Catholic chapels and priests, that the testatrix might have the benefit of their prayers and masses, it was held that no charitable, but only a selfish, intent was shown, and that the next of kin were therefore entitled; followed in *Re Blundell's Trusts*, 10 W. R. 34; 5 L. T. N. S. 337; 8 Jur. N. S. 5; 31 L. J. N. S. Ch. 52.

(*t*) *Attorney-General* v. *Herrick*, Amb. 712.

(*u*) *Attorney-General* v. *Doyley*, 7 Ves. 58, n.; *White* v. *White*, 1 Bro. C. C. 12; *Baylis* v. *Attorney-General*, 2 Atk. 239.

(*v*) *Moggridge* v. *Thackwell*, 7 Ves. 86.

is in the king by sign manual (*w*); but where the execution is to be by a trustee with general or some objects pointed out, there the court will take the administration of the trust" (*x*).

The cases of application by sign manual are now very rare. Whenever there is a trustee or executor appointed to carry out the charitable intentions of the donor, however generally those intentions may be expressed, the court will, in accordance with the doctrine laid down by Lord Eldon, itself regulate the application of the property, and direct a scheme (*y*). But where the gift was directly to the governors of a society instituted for the increase and encouragement of good servants, and it appeared that there was no such society, the gift was directed to be applied by sign manual for some other charity (*z*); and so where an executor, to whose direction the choice of charitable objects was left, renounced probate, it was ordered that the fund should be disposed of in charity, as the king by sign manual might direct (*a*).

Under the Roman Catholic Charities Act (*b*), charities for lawful purposes are not to be invalidated by the addition of any trust "deemed to be superstitious or otherwise prohibited by the laws affecting persons professing" the Roman Catholic religion, but the High Court of Chancery,

(*w*) See *Attorney-General* v. *Fletcher*, 5 L. J. N. S. Ch. 75; *Loscombe* v. *Wintringham*, 13 Beav. 87.

(*x*) *Paice* v. *Archbishop of Canterbury*, 14 Ves. 372; *Attorney-General* v. *Gladstone*, 13 Sim. 7; *Reeve* v. *Attorney-General*, 3 Hare, 191.

(*y*) See *In re Sutton*, *Stone* v. *Attorney-General*, 28 Ch. D. 464; 54 L. J. N. S. Ch. 613, where, though the gift to charity was in the most general terms possible, there was no suggestion of application by sign manual.

(*z*) *Loscombe* v. *Wintringham*, 13 Beav. 87.

(*a*) *Attorney-General* v. *Fletcher*, 5 L. J. N. S. Ch. 75; cf. with this *Attorney-General* v. *Gladstone*, 13 Sim. 7, where a trustee to whose discretion the choice of a charitable object was left died in the testator's lifetime; but the property having once had a trust character imposed upon it was applied by the court under a scheme, and not by sign manual.

(*b*) 23 & 24 Vict. c. 134, s. 1.

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or any judge thereof sitting at chambers, may, upon application, apportion the estate, or the annual income, so that a proportion thereof may be exclusively subject to the lawful charitable trusts declared by the donor or settlor, and that the residue thereof may become subject to lawful charitable trusts for the benefit of persons professing the Roman Catholic religion. Application by the court or judge under this section would, in nearly all cases, take the place of application by the Crown under sign manual of superstitious trusts. It has been held, however, that the section does not apply where a trust is wholly for a superstitious use (*c*), and in such a case *West* v. *Shuttleworth* has been strictly followed, and the gift held to fall into the residue.

I. (5). The charitable intent must be clear.

§ 4.—(5) Where the gift is not to a particular charity which fails, but to charity generally, the charitable purpose must be clearly expressed, as opposed to merely benevolent, virtuous or other uses which may or may not be charitable. Thus, where the gift was for "charitable or other purposes" (*d*); for "objects of benevolence and liberality" (*e*); for "benevolent, charitable and religious purposes" (*f*); for "charitable or public purposes, or to any person or persons" (*g*); for "the purchasing of such books as may have a tendency to promote the interests of virtue and religion, and the interests of mankind" (*h*); for "missionary purposes" (*i*); "for such charitable *or* benevolent objects or purposes" as the trustees or the testator might in their discretion think proper (*j*); or even "for the relief

(*c*) *Re Blundell's Trusts*, 10 W. R. 34; 5 L. T. N. S. 337; 8 Jur. N. S. 5; 31 L. J. N. S. Ch. 52.

(*d*) *Ellis* v. *Selby*, 7 Sim. 352; 1 My. & Cr. 286.

(*e*) *Morice* v. *Bishop of Durham*, 10 Ves. 522; cf. *Browne* v. *King*, 17 L. R. Ir. 448.

(*f*) *Williams* v. *Kershaw*, 5 Cl. & Fin. 111, n.

(*g*) *Vezey* v. *Jamson*, 1 S. & S. 69.

(*h*) *Brown* v. *Yeale*, 7 Ves. 50.

(*i*) *Scott* v. *Brownrigg*, 9 L. R. Ir. 246.

(*j*) *In re Riland's Estate, Phillips* v. *Robinson*, W. N. (1881) 173; *In re Jarman's Estate, Leavers* v. *Clayton*, L. R. 8 Ch. D. 584; 47 L. J. N. S. Ch. 675; 39 L. T. N. S. 89; 26 W. R. 907.

of domestic distress," assisting indigent but deserving individuals, or encouraging undertakings of general utility (*k*), —it has been held that there was no dedication to charitable purposes. On the other hand, a gift to "charitable and other *public* purposes in T." (*l*), to "charitable and deserving objects" (*m*), "for any charitable or religious purpose" (*n*), or to certain religious charities, "or to any other religious institution or purposes" (*o*), is good as a charity. The amount of a gift to charity must be certain or capable of being ascertained from the terms of the gift. Where there is a gift of part of a fund to a void purpose, *e.g.*, the repair of a tomb, and of the residue to a good charitable use, the amount of the void gift will be calculated, and the residue thus ascertained. In some cases the void gift may be nothing but an invalid charge on the fund, or a merely honorary trust, and then the whole fund goes to charity (*p*).

II. Rules for the execution of a general charitable intent.

§ 5. Where the charitable gift is thus general, or where the particular use intended being illegal, only the general charitable intention of the donor can be regarded, the application, whether by the court or by sign manual, may be to any charitable purpose at the discretion of the court or of the Crown (*q*). Where, however, the particular purpose fails from the first for other reasons than its illegality, or than its ceasing to exist before the death of the testator, an attempt will be made by the court in directing a scheme to carry out approximately the intentions of the donor.

(*k*) *Kendall* v. *Granger*, 5 Beav. 300.

(*l*) *Dolan* v. *Macdermot*, L. R. 3 Ch. 676; 17 W. R. 3.

(*m*) *In re Sutton*, *Stone* v. *Attorney-General*, L. R. 28 Ch. D. 464; 54 L. J. N. S. Ch. 613.

(*n*) *In re Sinclair's Trusts*, 13 L. R. Ir. 150.

(*o*) *Wilkinson* v. *Lindgren*, L. R. 5 Ch. 579; 18 W. R. 961.

(*p*) *Magistrates of Dundee* v. *Morris*, 3 Macq. 134; *Fisk* v. *Attorney-General*, L. R. 4 Eq. 521; *In re Williams*, L. R. 5 Ch. D. 735; *In re Birkett*, L. R. 9 Ch. D. 576; *Hunter* v. *Bullock*, L. R. 14 Eq. 45.

(*q*) *Attorney-General* v. *Syderfin*, 7 Ves. 43, n.; *Da Costa* v. *De Pas*, Amb. 228.

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Thus, (1) where the founder shows an intention to benefit a particular class of persons, but the particular mode which he indicates cannot be carried out, the scheme will be directed to the benefit of the same class in another way, *e.g.*, a fund left to provide a Gaelic chapel in London, such a chapel being found useless, was directed to be applied for the purposes of the Caledonian Asylum (*r*); and a gift to redeem poor slaves was applied to the education of emancipated slaves in the British colonies (*s*).

(2) When the particular class whom the founder intends to benefit are non-existent, the fund will be applied for the benefit of the class most nearly resembling them, *e.g.*, a gift for the benefit of Protestant Dissenters called Presbyterians at D., there being no strictly Presbyterian congregation there, was applied for the benefit of a congregation there which had been Presbyterian (*t*).

(3) Where a testator has given to two or more charitable purposes, one of which cannot be carried out, application of the gift which fails to the other charitable purposes mentioned is more *cy-près* to the intentions of the testator than application of it to a purpose very remotely *cy-près* to the purpose which fails; but if an application closely *cy-près* to the first purpose is possible, this is to be preferred to a division of the whole fund among the other charitable purposes (*u*). On the same principle, where a

(*r*) *Attorney-General* v. *Stewart*, L. R. 14 Eq. 17; 20 W. R. 570; 26 L. T. N. S. 419; cf. *Biscoe* v. *Jackson*, W. N. (1886) 172.

(*s*) *Attorney-General* v. *Gibson*, 2 Beav. 317, n.; cf. *Re Lousada*, Law Times, vol. 82, p. 358.

(*t*) *Attorney-General* v. *Bunce*, L. R. 6 Eq. 563.

(*u*) *Attorney-General* v. *Ironmongers' Co.*, 2 Beav. 324; and 2 M. & K. 576; cf. the unreported case of *Attorney-General* v. *Bishop of Landaff* there cited (at p. 586); and *In re Hyde's Trusts*, W. N. (1873) 202. See also *Mayor of Lyons* v. *Advocate-General of Bengal*, L. R. 1 App. Cas. 115; 45 L. J. P. C. 17; 34 L. T. N. S. 77; 24 W. R. 679, where, the residue being given in charity, besides particular legacies, it was held by the Privy Council that in applying the *cy-près* doctrine the court is to look primarily to the object of the charity which has failed, and is not bound

testator directed his residue to be divided, for promoting the Gospel, bringing up ministers, and other charitable purposes, which he intended to name, and he died without naming any other purpose, the court directed a scheme "having regard particularly to the other two objects named" (*v*). The principle was thus stated by Lord Langdale, M. R., in *Attorney-General* v. *Ironmongers' Company* (*w*), "Where a fund is to be disposed of *cy-près*, the court, for the sake of making a disposition, is bound to act upon the suggestions which are before it, however remote, and it is rather astute in ascertaining some application in conformity more or less with the intention of the testator. The case, however, is different where there are other charitable purposes mentioned in the testator's will itself, and in which a comparison may be instituted between the probability of the testator resorting to something very remote from his original intention, and something far less remote from the other objects which are specifically mentioned in the will. . . . . If it could have been found that there was a clear and close approximation to any purpose analogous to the first, the master ought to have preferred it to the second and third, distinctly mentioned in the will; but if such approximation were so remote that there would be very great difficulty in making out the similarity, and it appeared probable that if the subject had been in the contemplation of the testator he would have preferred the other two objects mentioned in his will, then I think it became the duty of the master to look to those second objects and lay aside the first."

In alteration of a charity. Rules for application *cy-près*.

§ 6. The rules for altered application under changed conditions of a charity already established *cy-près* to the

to apply the funds which have been set free to charities mentioned in the residuary clause.

(*v*) *Mills* v. *Farmer*, 19 Ves. 482.
(*w*) 2 Beav. 324.

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original purpose, resemble those for the first establishment of the charity *cy-près* to the intentions of the founder. The question of application by the Crown under sign manual does not, however, occur here. A charity being once established, the administration of it is superintended by the courts of equity and by the Charity Commission, who can direct new schemes for application and management: courts of equity as soon as the charity is in any way brought before them, the Charity Commission in accordance with the provisions of the Charitable Trusts Acts (*x*). The power of the courts of equity and of the Charity Commission in directing new schemes is limited, however, by the doctrine of *cy-près;* and where a scheme is to be made which cannot be brought within that doctrine, the legislature must interfere and the scheme be embodied in an Act of Parliament (*y*).

When applicable. On increase of income or change of circumstances.

The two events on which the necessity for altered application of the funds of a charity may arise are—(i) great increase in the income of the charity; (ii) change of circumstances making the original purpose obsolete or useless. Unless one of these events has happened, neither a court of equity, nor the Charity Commission, except under special provisions of the Endowed Schools Acts, and of the City Parochial Charities Act, 1882 (*z*), has any jurisdiction to alter the application of the charitable fund on supposed grounds of public policy (*a*).

Application of increased income.

§ 7. Where proportionate parts of the original income of a charitable trust have been given to various charitable purposes, and the income increases, the increase also will generally be applied *pro ratâ* to the same objects (*b*).

(*x*) See *post*.

(*y*) See the Charitable Trusts Act, 1853, s. 54, *post*, p. 154.

(*z*) *Post*.

(*a*) *Philpott* v. *St. George's Hospital*, 27 Beav. 107.

(*b*) Per Lord Langdale, M. R., in *Attorney-General* v. *Solly*, 5 L. J. N. S. Ch. 5.

Where not a proportionate part of the income but a fixed sum has been given to a certain number of charitable purposes, and the several sums exhaust the original income, the increase will generally be divided among them in the same way (*c*), even though one of the sums be described as surplus (*d*).

If, however, the several sums so given did not exhaust the original income, and an indefinite surplus was left which was given either to the trustees for their trouble or to some further charitable purpose, whether particular or general, it seems that the whole increased income must go with the surplus, and it may therefore happen that the increase of income does not go in charity at all (*e*).

If the trustees were themselves a charitable corporation, or, being a corporation, were required to make certain fixed payments, whether the income of the charity was sufficient for those payments or not, the presumption will be that a surplus, if surplus there was, was intended to go for the benefit of the corporation (*f*).

Three classes of cases were distinguished by Lord St. Leonards in his judgment in *The Mayor of Southmolton* v.

(*c*) *Thetford School Case*, 8 Co. 130; *Attorney-General* v. *Johnson*, Amb. 190; *Attorney-General* v. *Barham*, 4 L. J. N. S. Ch. 129.

(*d*) *Attorney-General* v. *Jesus College, Oxford*, 29 Beav. 163; 9 W. R. 449; 7 Jur. N. S. 592; *Attorney-General* v. *Coopers' Co.*, 3 Beav. 29; *Merchant Taylors' Co.* v. *Attorney-General*, L. R. 6 Ch. 512; 19 W. R. 641; 25 L. T. N. S. 109; 40 L. J. N. S. Ch. 545.

(*e*) *Attorney-General* v. *Mayor of Bristol*, 2 J. & W. 294; *Attorney-General* v. *Skinners' Co.*, 2 Russ. 407; *Mercers' Co.* v. *Attorney-General*, 2 Bligh, N. S. 165; *Attorney-General* v. *Drapers' Co.*, 4 Beav. 67; *The Beverley Case*, 15 Beav. 540; 5 W. R. 840; *Attorney-General* v. *Trinity College, Cambridge*, 24 Beav. 383; *Attorney-General* v. *Wax Chandlers' Co.*, L. R. 5 Ch. 503; 19 W. R. 33; 39 L. J. N. S. Ch. 782; 23 L. T. N. S. 173.

(*f*) *Attorney-General* v. *Trinity College, Cambridge*, 24 Beav. 383; *Attorney-General* v. *Wax Chandlers' Co.*, L. R. 5 Ch. 503; 19 W. R. 33; 23 L. T. N. S. 173; 39 L. J. N. S. Ch. 782; *Attorney-General* v. *Dean and Canons of Windsor*, 8 H. L. C. 369; 8 W. R. 477; 2 L. T. N. S. 578.

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Attorney-General (*g*). 1. Where the estate is doled out by a gift of portions of the rents which represent the estate, when the increase or decrease will go to or be borne by the parties in the same proportions. 2. Where there is a dedication of the estate to charity by a clear intention expressed or implied from what is stated in the will. 3. Where there is no gift of the residue but a gift to a particular body, *e. g.* a college for the benefit of that college, and to certain persons belonging to the college, or to certain poor persons, the objects *ultra* the college being confined to particular sums and persons named; there being no gift of the residue as residue, but only a gift of the property to that body. A similar distinction was made in the Lord Chancellor's judgment before the House of Lords in *The Beverley Case* (*h*)—1. Where all the rents of an estate are given in charity for ever, the whole estate being thereby given. 2. Where the testator has given the whole to charity but has not apportioned the whole. 3. Where there was known by the testator to be a surplus of which he has neither expressly nor impliedly disposed.

If there was a surplus which from the first was undisposed of, and the trustees were not a body whom the founder could be supposed to have wished to benefit, the court can deal with the surplus in its absolute discretion (*i*).

The principles upon which, though the original income was completely disposed of in payments to specified charities, the court will, upon increase of the income, in the exercise of its discretion (*j*), depart from the rule above stated, and, instead of dividing the increase of income

(*g*) 5 H. L. C. 1; 23 L. J. N. S. Ch. 567.

(*h*) 5 W. R. 840.

(*i*) *Attorney-General* v. *Marchant*, L. R. 3 Eq. 424; 15 W. R. 144; 36 L. J. N. S. Ch. 47.

(*j*) *Attorney-General* v. *Dean and Canons of Windsor*, 8 H. L. C. 452; 8 W. R. 477; 2 L. T. N. S. 578; *Attorney-General* v. *Marchant*, L. R. 3 Eq. 429; 15 W. R. 144; 36 L. J. N. S. Ch. 47.

among the several objects proportionately, distribute it to one or two of such objects, or to some new object altogether, are mainly the following:—

1. Where application of the increased income *pro ratâ* would produce an obvious absurdity, some more reasonable application will be sought for, *e.g.*, in *In re Ashton's Charity* (*k*), where surplus income was, according to the will of the founder, to be distributed among six almswomen, application of the increase *pro ratâ* would have made the almswomen not almswomen at all, but persons of wealth and position (*l*).

2. Where such application would be very clearly against the founder's intentions, *e. g.*, where there were both extraordinary increase of income and a change in the circumstances of the locality and in the customs of the community, technical education has been allowed to be substituted for apprenticeship, and a large part of the residue, which was originally given in doles, has been converted into an educational charity (*m*). So strong has been the feeling against dole charities that upon increase of income the court has refused to make any increase in the amount of a dole charity, dividing the increase between the two other objects named by the founder, the provision of a schoolmaster, and the purchase of books for a college (*n*). So, generally, if it should appear that the directions of a donor with respect to a particular object, if carried out in these days, so far from being beneficial, would be detrimental to the objects he meant to benefit, in that

(*k*) 27 Beav. 115.

(*l*) Cf. *Re Sekforde's Charity*, 4 L. T. N. S. 321, where a great increase in the funds of a charity for thirteen poor men and three poor widows was applied in the establishment of a dispensary and in a large grant to a grammar school.

(*m*) *In re Campden Charities*, L. R. 18 Ch. D. 310; 50 L. J. N. S. Ch. 646; 45 L. T. N. S. 152; 30 W. R. 496.

(*n*) *Attorney-General* v. *Marchant*, L. R. 3 Eq. 424; 15 W. R. 144; 36 L. J. N. S. Ch. 47.

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case a good reason would exist for the court to exercise its discretion (*o*). Where a charity had been established for the diminution of vagrancy by setting beggars to work, and owing to the introduction of the poor laws, which provided relief and work for the adult poor so far as expedient, the purpose of the founder could no longer be satisfactorily carried out in the mode directed by him, the funds, which had greatly increased, were allowed to be applied according to a scheme of the Attorney-General, *cy-près* in providing intellectual exertion for the children of the poor (*p*).

3. If one of the objects named should have so far ceased that there are few or no demands for that particular kind of charity, and therefore it should not require any income, or, at least, no increase of income, that would be an occasion for the exercise of its discretion by the court (*q*). This would be the case with a hospital for the reception of lepers in England (*r*), with a charitable gift for the redemption of Christian captives in Barbary (*s*), with a charity for prisoners imprisoned for debt, since the abolition of debtors' prisons and of imprisonment for debt by the act 32 & 33 Vict. c. 62 (*t*), with a bequest of porter to people in a workhouse, when the Poor Law Commissioners, acting under the statute 4 & 5 Will. IV. c. 76, prohibited the introduction of fermented liquors into workhouses (*u*),

(*o*) Per V.-C. Kindersley, L. R. 3 Eq. 430.

(*p*) *In re Bridewell Hospital*, 8 W. R. 718.

(*q*) *Attorney-General* v. *Marchant*, L. R. 3 Eq. 430; 15 W. R. 144; 36 L. J. N. S. Ch. 47.

(*r*) *Attorney-General* v. *Hicks*, 3 Bro. C. C. 166, n.

(*s*) *Ironmongers' Company* v. *Attorney-General*, 2 My. & K. 576; 2 Beav. 313; Cr. & Ph. 208; 10 Cl. & F. 908; 10 L. J. N. S. Ch. 201.

(*t*) *Attorney-General* v. *Hankey*, L. R. 16 Eq. 140, n.; cf. *Mayor of Lyons* v. *Advocate-General of Bengal*, 24 W. R. 679; L. R. 1 App. 91; 45 L. J. N. S. P. C. 17; 34 L. T. N. S. 77; *In re Prison Charities*, L. R. 16 Eq. 131.

(*u*) *Attorney-General* v. *Vint*, 3 De G. & Sm. 704; 19 L. J. N. S. Ch. 150; 15 L. T. 83.

with a devise in trust for the use of University College to buy an advowson, the college already possessing as many as it was allowed to hold under the Mortmain Acts (*v*).

Rules for *cy-près*, when applicable.

§ 8. What, then, is the doctrine of *cy-près* in connection with such schemes for the altered administration of a charity? The rules are in the main the same as for the first establishment of a charity *cy-près* to the intentions of the donor.

To the same class of persons.

(1) The new application must be for the benefit of the same class. Thus a gift for the "poorest of my kindred" may, on the failure of poor kindred, be applied *cy-près* for the benefit of poor persons other than kindred of the founder (*w*); a trust for discharging out of prison poor prisoners in the prisons of Ludgate, and the Compter in Ludgate, and the Marshalsea in Southwark, was altered by a scheme for application of the trust funds "in procuring the discharge of prisoners from the Queen's Bench and Marshalsea," for which was substituted by a later scheme, on imprisonment for debt being abolished, "any gaol or house of correction in England or Wales," to help the prisoners "to get back to their families or to procure work" (*x*); but a charity for "poor prisoners," by which phrase is meant prisoners for debt, is not properly applied in the education of the children of convicts, especially when that purpose is already provided for by the Industrial Schools Act (*y*). A doubt has even been expressed whether an arrangement which transferred funds from Oxford to Cambridge could be called an application *cy-près* (*z*).

(*v*) *Attorney-General* v. *Green*, 2 Bro. C. C. 492.

(*w*) *Attorney-General* v. *Duke of Northumberland*, L. R. 7 Ch. D. 745; 26 W. R. 586; 47 L. J. N. S. Ch. 569; 38 L. T. N. S. 245.

(*x*) *Attorney-General* v. *Hankey*, L. R. 16 Eq. 140, n.

(*y*) *In re Prison Charities*, L. R. 16 Eq. 129.

(*z*) *Andrew* v. *Merchant Taylors' Co.*, 7 Ves. 223.

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On the other hand the widening of the area from which recipients of a charity are to be taken is allowed when changes have occurred in the income or the locality (*a*).

To the same class of purposes.

(2) Whether the application, to be *cy-près*, must always be to the same class of purposes, whether, for instance, a charity for the relief of the poor by doles of money, food, clothes, or the like, must be applied in doles, whether an educational charity must be applied to purposes of education, and an apprenticeship charity to apprenticeships, has been the subject of a good many decisions. It is now quite clear that, at least where there has been a large increase in the value of the charity, the increased income need not necessarily be applied to the purposes appointed by the founder in view of a very much smaller income.

The strict doctrine is that, where variation from the original objects is absolutely necessary, the variation must be as slight as possible, and the extension of the charitable purposes very gradual. Thus, in a case before Lord Eldon, where there was a gift to apprentice two poor boys, sons of members of a Presbyterian congregation in a particular parish, and the fund very much increased, Lord Eldon held that the court was absolutely bound to proceed by steps, first providing for all the poor boys of the congregation in that parish, then for the poor boys of the congregation out of that parish, then for girls of the congregation in that parish, then for girls of the congregation out of that parish, and so on by a series of steps (*b*). But the doctrine is now seldom so strictly followed.

There has been a growing inclination to apply "poor's

(*a*) *Re Sekforde's Charity*, 4 L. T. N. S. 321; *Attorney-General* v. *Wansay*, 15 Ves. 231; *In the Matter of the St. Leonard, Shoreditch, Parochial Schools*, L. R. 10 App. Cas. 306; 33 W. R. 756; 54 L. J. N. S. P. C. 30; 51 L. T. N. S. 305.

(*b*) *Attorney-General* v. *Wansay*, 15 Ves. 231.

charities," which have increased in value, to purposes of education, though, as far as possible, for the benefit of the same class among whom the doles were before distributable. As early as 1802 a bequest of a very large amount in trust for the poor inhabitants of certain parishes to be applied either in money, provisions, physic, or clothes, was allowed by Lord Eldon to be applied in part in payments for the schooling and apprenticing of poor children, and in occasional gratuities to servants and apprentices conducting themselves well (*c*). Similarly Lord Lyndhurst held (*d*), that the income of a charity given in trust "for the relief of the poor" might be applied by the trustees, in their discretion, in educating the poor, and that such an application was actually within the language of the instrument creating the trust.

Opposed at first sight to these instances in which so liberal a doctrine was followed, are a number of dicta on the limits of the powers of the court in dealing with charitable trusts. Thus, in *Attorney-General* v. *Whiteley* (*e*), Lord Eldon said, "I do not apprehend it is competent to this court, as long as it can find any means of applying the charitable fund to the charity, as created by the founder, upon any general notion that any other application would be more beneficial to the inhabitants of the place, to change the nature of the charity." To the same effect Sir John Romilly, M. R., in *Attorney-General* v. *Governors of Sherborne School* (*f*), said the court "has no authority to vary the original foundation and to apply the charity estates in a manner which it conceives to be more beneficial

(*c*) *Bishop of Hereford* v. *Adams*, 7 Ves. 324.

(*d*) *Wilkinson* v. *Malin*, 2 C. & J. 636; 2 Tyrw. 544; cf. *In re Ashton Charity*, 27 Beav. 115; *Attorney-General* v. *Bovill*, 1 Ph. 762.

(*e*) 11 Ves. 241 (1805).

(*f*) 18 Beav. 280.

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to the public, or even such as the court may surmise that the founder would himself have contemplated, could he have foreseen the changes which have taken place by the lapse of time;" and again, in *Philpott* v. *St. George's Hospital* (*g*), "If the testator has by his will pointed out clearly what he intends to be done, and his directions are not contrary to the law, this court is bound to carry that intention into effect, and has no right and is not at liberty to speculate upon whether it would have been more expedient or beneficial for the community that a different mode of application of the funds in charity should have occurred to the mind of the testator, or that he should have directed some different scheme for carrying his charitable intentions into effect." In the first of these cases, however, the question was of the nature of the education to be given in a school already established and the persons to be admitted to its benefits, and such dicta did not prevent the same judge from allowing, in a judgment given side by side with the judgment in the last-mentioned case, a scheme for the application of increased income of an almshouse charity in the foundation of a school for the benefit of the locality where the almshouses were situated (*h*).

§ 9. The general principles of the doctrine of *cy-près* have been stated recently by the Court of Appeal in the *Campden Charities Case* (*i*), in a much more liberal spirit as well as more fully than in any preceding judgment. The way had been prepared for this by the statement of the doctrine contained in the judgment of Lord Westbury before the House of Lords in a Scotch case, *Clephane* v. *The Lord Provost, &c. of Edinburgh* (*j*): "In both countries (Scot-

Clephane v. *Lord Provost, &c. of Edinburgh.*

(*g*) 27 Beav. 107.

(*h*) *In re Ashton Charity*, 27 Beav. 115.

(*i*) L. R. 18 Ch. D. 310; 50 L. J. N. S. Ch. 646; 45 L. T. N. S. 152; 30 W. R. 496.

(*j*) 1 H. L. Sc. 417.

land and England) this principle has prevailed, namely, that there shall be a very enlarged administration of charitable trusts. You look to the charity which is intended to be created, and you distinguish between it and the means which are directed for its accomplishment. Now the means necessarily vary from age to age. Take a charity such as the present for the relief of the poor. The condition of the country or of the locality may have dictated what were at the time very convenient means for its proper application. In the progress of society, however, with the greater diffusion of wealth, and the growth of population, the means originally devised may become inadequate to the end, and courts of equity have always exercised the power of varying the means of carrying out the charity from time to time, so as to secure more effectually the benefits intended." This wide statement was limited to a certain extent by the succeeding sentences. "It is true you cannot substitute one charity for another. You may substitute for a particular charity which has been defined, and which has failed, another charity *ejusdem generis*, or which approaches it in its nature and character; but you cannot take a charity which was intended for one purpose and apply it to a purpose altogether different" (*k*). The judgment of the Court of Appeal in *The Campden Charities Case* (*l*), reversing the judgment of Hall, V.-C., went a good deal further than the judgment of Lord Westbury, but in effect it does no more than put the coping stone to the long line of decisions, which have, in a somewhat dim way, recognized the right of the Court of Chancery to exercise its discretion in the administration of charities, on the supposition of what would have been the wishes of the

The Campden Charities Case.

(*k*) *Clephane* v. *Lord Provost, &c. of Edinburgh*, 1 H. L. Sc. 421.

(*l*) L. R. 18 Ch. D. 323; 50 L. J. Ch. 646; 45 L. T. N. S. 152; 30 W. R. 496.

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Judgment of Jessel, M. R.

founder if still alive. The judgment of Sir George Jessel, M. R., in this case is of very great importance, and may be quoted at some length. "The scheme is made in pursuance of what is commonly known as the *cy-près* doctrine, and in cases like this it is applied where, from lapse of time and change of circumstances, it is no longer possible beneficially to apply the property left by the founder or donor in the exact way in which he has directed it to be applied, but it can only be applied beneficially to similar purposes by different means. In the present case the property has increased enormously in value. The property which was left by the Viscountess Campden produced 10*l.* per year. No doubt 10*l.* per year in the time of Queen Elizabeth was a very different sum from 10*l.* a-year now, but still a moderate sum compared with the present value of the property, which is about 2,200*l.* a-year. The property left by the Viscount Campden has increased in the same way from 10*l.* a-year to 1,040*l.* a-year, and the property purchased from Cromwell's Gift, which appears to have been 45*l.*, now produces, I think, something like 1,000*l.* a-year. Therefore the increase in value has been something enormous. In the next place, the persons who were to be benefited were poor parishioners of Kensington, subject to what I am about to say about the different instruments. The then village of Kensington was a small village about a mile and a half from Hyde Park Corner, and in old documents it is called a village. As it grew it called itself a town, but it seems never to have been legally a town in the sense of having a market and franchises. Now it is what we know it, a suburb of London, very thickly inhabited with many thousands of people, and containing a large number of houses of great magnitude and value, inhabited by wealthy people. The whole of the circumstances of the place have changed. That which was a provision for the poor inhabi-

10*l.* a year increased to 2,200*l.* a year.

10*l.* a year increased to 1,040*l.* a year.

Place changed from a village to the richest suburb of London.

tants of a village is now a provision for the numerous inhabitants of this large town, or part of a town. Again, circumstances have changed in another way. The habits of society have changed, and not only men's ideas have changed, but men's practices have changed, and in consequence of the change of ideas there has been a change of legislation; laws have become obsolete, or have been absolutely repealed, and habits have become obsolete and have fallen into disuse which were prevalent at the times when these wills were made. The change, indeed, has become so great in the case that we are considering that it is eminently a case for the application of the *cy-près* doctrine, if there is nothing to prevent its application. . . . The great stress of the argument was as regards the will of the Viscountess Campden, and as to that there are definite directions to be found which, it is alleged, will be contravened by sanction being given to the proposed scheme of the Charity Commissioners. Now, as to that, it is necessary to see what they are. She gives money, 200*l.*, to be laid out in land to produce 10*l.* a-year on trust that the legatees, who are named, parishioners of Kensington and the churchwardens of the parish, shall apply the rent in this way; one moiety from time to time for ever for and towards the better relief of the most poor and needy people that be of good life and conversation that should be inhabiting within the said parish of Kensington, and the other moiety, or half part thereof, shall be applied yearly for ever to put forth one poor boy or more, being of the said parish, to be apprenticed and the 5*l.* which shall be due to the poor of the parish to be paid to them half-yearly for ever at Lady-day and Michaelmas, in the church or the porch thereof at Kensington. . . . Now it is said that as regards the apprenticing of the poor boys, we are to apply 1,100*l.* a year in exactly

Change in habits of society.

Doles to the poor.

Apprenticing.

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the same way that the testatrix directed 5*l.* a year to be paid. The answer, I think, is very plain. In giving 5*l.* a year to apprentice one poor boy or more she evidently thought that there might occasionally be a chance of more than one boy; but her notion was that there would be enough for one boy, and, no doubt, that was so at that time, and having regard to the 5*l.* a year, which was all she gave. But did she imagine, or can anybody suppose she imagined, she was going to provide 1,100*l.* a year to apprentice any number of boys that might be living in the parish? Of course, she was not dealing with anything of the kind. The amount has so increased that we have no knowledge, nor can we even guess, what she would have done with it if she had anticipated any such increase. But then there is this further observation to be made, that at the time when this will was made apprenticeship was compulsory by the law of England. It was actually part of the then legislation by the Act of 5 Eliz., that nobody should exercise a trade in this country without he had been apprenticed. He need not have been bound by indenture, but he must have been apprenticed for seven years, and by some of the subsequent acts that was extended beyond the trades mentioned in that act to other trades and callings, and the legislation so remained until the 54th year of King George III., so that we can perfectly well understand why she directed the boys to be put out and apprenticed.

Made compulsory by 5 Eliz. c. 4, s. 31.

Obligation removed by 54 Geo. 3, c. 96.

It was the only way in which the poor boys of the parish could be enabled to exercise a trade, and it was not therefore that she desired an apprenticeship *per se*, but she wished to benefit the poor by enabling the poor boys of the parish to earn their living as mechanics or otherwise, having regard to the trades specified in the statute of Queen Elizabeth. That was her object. Times

have changed; . . . . ideas have changed. All that legislation has been repealed. It is no longer obligatory on poor boys to be apprenticed. They can be taught in other ways a knowledge of their trade in much shorter periods, and can thereby be enabled to earn their living. Besides this, the same ideas which produced a change in legislation have also produced a change in the habits of mankind in this country. Apprenticeship, although not quite obsolete, is rapidly becoming so. Fewer masters take apprentices and fewer boys are apprenticed. Here again we must have regard to the existing usages of society and the existing wants of the poor, who are intended to be benefited. It appears to me this is exactly the case which was pointed out by Lord Westbury in *Clephane* v. *Lord Provost of Edinburgh*, cited by the appellant's counsel, where the means to an end require change, the end being kept in view—the end to be kept in view being such an education to be given the young poor of the parish as will enable them to gain their livelihood in an honest and respectable manner. It therefore appears to me to be quite reasonable that while leaving to some extent the direction contained in Lady Campden's will, so as to ensure some apprentices being still bound, there being still, as it appears by the evidence, some masters willing to take apprentices and some boys desirous of being apprenticed, we should not confine the discretion of the trustees by directing them to expend the whole of this large fund in binding boys apprentice, but leave them a discretion, beyond the small number which we think it should be compulsory on them still to bind apprentice, to apply the rest of the fund either in apprenticing boys, which they still may do if it is found desirable, or any other similar purposes for the benefit of the poor of the parish. . . . The next point is as regards the other half of *Lady Campden's Charity*, which is given

Apprenticeship funds not to be wholly diverted.

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Doles.

in what is technically called doles. It is 5*l.* per year, to be distributed in two half-yearly payments to the poor alone, and in the church or porch thereof. That means 50*s.* each half-year, to be paid in money, in shillings and sixpences and half-crowns, to the poor people of the village who come to church. That is the practice in many parishes in England, and it is a practice which, I think, would be more honoured in the breach than in the observance. There is no doubt that it tends to demoralize the poor and benefit no one. With our present ideas on the subject, and our present experience, which has been gathered as the result of very careful inquiries by various committees and commissions on the state of the poor in England, we know that the extension of doles is simply the extension of mischief. That is a very great reason for not extending them if we can help it. Here, again, no one has contended that 1,100*l.* per annum shall be distributed in two half-yearly portions in coins to the poor at the church or church porch. We have not to overrule any objection on this ground, for no objection has been made. . . . . The trustees have not at all followed this direction of the will. But ought we, sitting here simply to interpret the law, to hold ourselves bound by the words of the will to distribute this large sum of money in doles in this fashion? I think we ought not. As I said before, we must consider not only the change in amount, but the change in circumstances. That which might be tolerable, that is, the distribution of 50*s.* in each half-year among a few poor people in a small village, ... would be intolerable on a large scale in a large town like Kensington. But was it the intention of the testatrix? Here, again, I should say emphatically, No. Could she have intended to distribute 500 sovereigns every half-year among the poor of a large town like Kensington? There was no

Their mischievousness now recognized.

such idea in her mind. She was . . . giving this comparatively small sum of 50*s.* to a few poor people in the village. Probably she thought the distribution would be carefully superintended by the churchwardens, who would know the deserving poor, which is the class of poor she intended to benefit, and would not do any mischief, and might be productive of some good. It seems to me, when you consider the change in the amount of money, and the change in the surrounding circumstances, you cannot impute to the testatrix an intention to distribute this large sum in the way I have mentioned, and I must add, in favour of the petitioners, that it was not suggested on their part that any such course should be adopted. That being so, and we being bound to administer the funds *cy-près*, what is the principal object which the testatrix had in view as distinguished from the means by which she wished that object to be carried out? The principal object was to provide for the poor, and what poor? For the relief of 'the most poor and needy that be of good life and conversation that should be inhabiting the parish of Kensington.' . . . . It has been suggested that, inasmuch as a dole is a payment direct to a poor person, in carrying out the new scheme the court is bound by that portion of the direction of the old scheme or will which directs the dole to be paid in personal payments. The answer is very simple; if you do not direct it to be laid out in doles at all, the mere incident of a dole that it is paid to some person direct cannot be regarded as a direction given by the testatrix. The testatrix directs the dole to be paid, and nothing else, and the personal payment follows; but if you get rid of the dole altogether, on the ground that it is no longer desirable to keep it in continuance, how can you say you are bound to respect that which is not a direction of the will, but a mere incident to the direction,

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the personal payment to the poor people? It appears to me that that objection is wholly unfounded."

Judgment of James, L. J.

In the same case Lord Justice James said, "We are dealing with a fund so large that that itself would afford a very good and reasonable ground for applying it *cy-près*. But what strikes me as the strong thing is this, that to confine the application of that charity in the present state of things, in the present state of feeling, and the present state of the law, to those persons only among the poor of Kensington whose children would be willing to become apprentices to tradesmen or otherwise, and to exclude from the charity all that other mass of poor people who have got the same claim, and who do not now find it beneficial for their children to be put out as apprentices, would be, in fact, to exclude from the charity the great majority of that class of poor who, it is obvious to my mind, Lady Campden contemplated as recipients of the benefit of the charity, and that in doing that we should be in truth defeating the spirit of Lady Campden's gift by following strictly the letter when that letter has become inapplicable."

The scheme of the Charity Commissioners for the Campden Charities.

The scheme of the Charity Commissioners was thus affirmed, by which, after providing for the apprentice fees and premiums already granted, the trustees might apply a portion of the residue of the clear income, not exceeding in any year one moiety of such residue, for all or some of the following purposes:—(a) A sum not exceeding 200*l.* for the relief of poor deserving inhabitants in cases of sudden sickness or other exceptional distress; (b) an annual sum not exceeding 300*l.* in aid of a dispensary, hospital, or institution for providing trained nurses for the poor; (c) an annual sum, not exceeding 600*l.*, in payment of pensions to deserving and necessitous inhabitants; (d) the residue of the said moiety to be applied so as to encourage

the formation of provident habits in contributions towards the payment of annuities, &c. The other moiety of the clear income, together with so much of the first moiety as might not be applied to the purposes before mentioned, was to be applied in the advancement of the education of the children resident in the parish who attended, or had attended, any public elementary school, as defined by the Elementary Education Act, in one of the following ways:—(a) In premiums by way of apprenticeship or outfits for poor boys of the parish, or other help and advancement to assist them on entering on the duties of life. (b) In payments not exceeding 6*l.* each, to encourage the continuance of the attendance at elementary schools of children above the age of eleven. (c) In payments of exhibitions not exceeding 30*l.* each, tenable for a period of three years, at higher places of education, or at places of technical or professional education, or as public teachers. (d) In providing lectures or evening classes for the benefit of scholars who should have attended elementary schools. There was also a power to make payments for the instruction of deaf and dumb children. It is to be noted that this case does not go so far as to extinguish either an apprenticeship or a dole charity existing at the time. It being shown that there was still a slight demand for the apprenticeship charity, provision was made for the continuance of this in the scheme; the dole charity, it appeared, had been discontinued for some time past, and no one proposed to re-establish it. Moreover, the new purposes were for the benefit of the same class of persons, the poor, and the case would not justify the diversion of charities, whose intention was the relief of the poor, to objects of general public utility or special religious purposes.

Results of this decision.

§ 10. The decision, it is to be observed, was a confirmation

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of a scheme made by a competent authority, with the details of which the court declared that they should not in any case have thought it their duty to interfere. This, however, does not make the decision of any less value on the principles of *cy-près*, "those rules of law which," as Sir George Jessel said, "govern the Charity Commissioners as well as they govern the Courts of Justice." The diversion of dole and apprenticeship charities and the like to educational purposes had already been allowed in certain special cases, and under certain conditions, by the Endowed Schools Act, 1869; and a diversion of charitable funds to new purposes very similar in its details to what was allowed in *The Campden Charities case* received the direct sanction of the legislature in the powers given to the Charity Commission over the City parochial charities by the City Parochial Charities Act (*m*). It thus seems to have been felt that the principles of *cy-près* had been carried in the Campden case further than in earlier cases, and that this extension of the old doctrine would be followed with greater confidence if specially recognized by Act of Parliament; though of course the Act of Parliament, by allowing in the case of the city charities generally schemes of a kind sanctioned by the Court of Appeal only in a special case, and with direct reference to the spirit of the founder's intentions, really carries the doctrine one step further still, and allows diversion of certain charitable trusts to new purposes on grounds of public policy alone. The Campden case must be followed with caution. It has been described as the high-water mark to which the court has gone in the direction of diverting charities from purposes unsuitable to the times, and before generalizing from it to other cases it must be seen that the circumstances are really alike (*n*).

Agrees with special powers given to the commissioners by legislation.

(*m*) 46 & 47 Vict. c. 36, ss. 13 and 14, *post*.

(*n*) See the evidence taken before the Select Committee on the Charitable Trusts Acts, P. P. 1884, pp. 104 and 105.

For a further extension of the power of diverting charities proposed in the Charitable Trusts Bill of 1881, see *ante*, Introduction, Part I., p. 22.

Religious preferences of founder, how far to be followed.

§ 11. In regard to the religious preferences expressed or shown by the founder, the doctrine of the Charitable Trusts Acts (*o*) differs somewhat from the older doctrine as to the strictness of its adherence to the intentions of the founder so far as they can be known. Of course, it is only since the Toleration Acts that difference of religious belief in the founders of charitable institutions for religious uses can be recognized. Since these acts (*p*) not only will an express direction by the founder be carefully followed in the case of a charity for religious uses, as to the religious instruction to be given or the religious services to be performed, but where there is no express direction what religion is to be taught or practised, or where the direction given is obscure, reference may be made to the opinions and religious tenets of the founder, to be gathered from extrinsic evidence (*q*). At the same time, the presumption would be that the religion of the country was intended, and the burden of proof would lie on those who sought to show that this was not the intention of the founder (*r*).

In the case of educational trusts, also, which, at least down to the time of Charles the First, involved instruction in religion as well, that religion being necessarily the Established religion (*s*), the religious intentions of a founder who belonged to any other than the Established Church could

(*o*) See *post*.

(*p*) On which see *ante*, p. 40.

(*q*) *Shore* v. *Wilson*, 9 Cl. & Fin. 355 (Lady Hewley's Charity).

(*r*) *Attorney-General* v. *Calvert*, 23 Beav. 258; 3 Jur. N. S. 500; 29 L. T. 61.

(*s*) Per V.-C. Wood in *In re Chelmsford Grammar School*, 1 K. & J. 543; but see also *Attorney-General* v. *Cullum*, 1 Y. & C. C. C. 411; *Attorney-General* v. *Trinity College*, 24 Beav. 383.

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not formerly be regarded; though limitation of the benefits of a charity, purely secular, to members of a particular class would be good, even if the class was co-extensive with a particular religious community, *e.g.*, Jews (*t*). Now, however, a clear direction by the founder that only persons conforming to a certain religious denomination should enjoy the benefits of a school, or that instruction in the tenets of that denomination should be given in the school, would be strictly observed (*u*); as would also a clear inference from the words of the instrument creating the trust, or from long and early usage in the absence of express directions (*v*).

The same is true of an eleemosynary charity, such as a hospital or almshouse, the benefits of which were expressly to be enjoyed by members of a certain religious body, or which was to be governed by members of such a body (*w*). If a school, hospital, or other charity was clearly intended for the benefit of members of one religious body only, its scope can be enlarged only by application to Parliament (*x*). If it only appears that instruction in the doctrines or performance of services according to the rites of a particular religion is to be provided, but not that those only professing such religion are to have the benefits of the educational or eleemosynary charity, a scheme will be adopted for the admission of persons who do not conform to such religion (*y*).

(*t*) *Da Costa* v. *De Pas*, Amb. 228.

(*u*) *Attorney-General* v. *Calvert*, 23 Beav. 248; 3 Jur. N. S. 500; 29 L. T. 61.

(*v*) *Attorney-General* v. *Limerick*, 5 Ir. Rep. Eq. 403; *Attorney-General* v. *Clifton*, 32 Beav. 596; 2 N. R. 215.

(*w*) *Shore* v. *Wilson*, 9 Cl. & Fin. 355.

(*x*) *Attorney-General* v. *Market Bosworth School*, 35 Beav. 305.

(*y*) *Attorney-General* v. *Haberdashers' Co.*, 19 Beav. 385; 24 L. J. N. S. Ch. 329; 23 L. T. 328; *Attorney-General* v. *Cullum*, 1 Y. & C. C. C. 411; but cf. *Attorney-General* v. *Sherborne Grammar School*, 18 Beav. 256; 2 W. R. 396; 18 Jur. 636; *Baker* v. *Lee*, *Re Ilminster School*, 8 H. L. C. 495; 7 Jur. N. S. 1; 2 L. T. N. S. 701.

But in the case of educational or eleemosynary charities, as to which no such express direction is given, the religious opinions of the founder are not generally to be considered. "In educational charities the opinions of the founder are only of value when some directions may have been given by him relative to the religious instruction to be given to the pupils to be taught, and only for the purpose of explaining and elucidating any obscurity or ambiguity which may be found in such direction (*z*). In eleemosynary charities the religious opinions and tenets of the founder are wholly to be disregarded, and are to be treated as forming no indication of his intention on which the court can act. The presumption is that he included all, and the burden of proof lies on those who seek to exclude" (*a*).

The Charitable Trusts Acts and Endowed Schools Acts provide for the observance of such preferences in the case of educational charities (*b*), by the continuance of religious instruction in the doctrines of a particular religion, or of religious services according to the rites of the Church of England, or of a sect, but this, except in certain specified cases, is not allowed to operate in schemes made under the acts to the exclusion of persons who belong to other religions.

Change in the character of the education given.

§ 12. The question of variation in educational trusts to meet the altered circumstances of the day, and new views of education, was dealt with in the older cases with extraordinary strictness, no scheme being sanctioned which introduced into a grammar school, instituted for the teaching of Greek and Latin, any of the more modern

(*z*) Cf. *Shore* v. *Wilson*, 9 Cl. & Fin. 355.

(*a*) *Attorney-General* v. *Calvert*, 23 Beav. 248; 3 Jur. N. S. 500; 29 L. T. 61; *Attorney-General* v. *Clifton*, 32 Beav. 596; 2 N. R. 215.

(*b*) See *post*, 16 & 17 Vict. c. 137, s. 46; 32 & 33 Vict. c. 56, ss. 15—19; 36 & 37 Vict. c. 87, s. 7.

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branches of learning, such as mathematics, natural science, or modern languages (*c*). Writing and arithmetic stand on a different footing, and might be introduced into a scheme for the management of a free grammar school (*d*).

This rigour was abated by the operation of the Grammar Schools Act, 1840 (*e*), in regard to all schools which came within its definition. The first section of that act enacted, that whenever, after its passing, any question should come under consideration in any of her Majesty's courts of equity concerning the system of education thereafter to be established in any grammar school, it should be lawful for the court to make such decrees or orders as to the said court should seem expedient for extending the system of education to other useful branches of literature and science, in addition to or (subject to certain provisions) in lieu of the Greek and Latin languages, or such other instruction as might be required by the terms of the foundation or the then existing statutes. The provisions referred to were, (1) that unless it should be found necessary from the insufficiency of the revenues of any grammar school, nothing contained in the act should be construed as authorizing the court to dispense with the teaching of Latin, Greek, or either of such languages, there required to be taught, or to treat such instruction otherwise than as the principal object of the foundation; nor to dispense with any statute or provision then existing, so far as relates to the qualifi-

(*c*) *Attorney-General* v. *Whiteley*, 11 Ves. 241; *Attorney-General* v. *Dean and Canons of Christ Church*, Jac. 484; *Re Highgate School*, 2 Jur. 774. On the question under what circumstances a school will be considered a grammar school for instruction in the learned languages, see *Attorney-General* v. *Worcester*, 9 Hare, 359; *Attorney-General* v. *Earl of Stamford*, 10 L. J. N. S. Ch. 58; 1 Ph. 737.

(*d*) *Attorney-General* v. *Haberdashers' Co.*, 3 Russ. 530; *Attorney-General* v. *Dixie*, 3 Russ. 534, n.; *Attorney-General* v. *Gascoigne*, 2 Myl. & K. 647; *Attorney-General* v. *Caius College*, 2 Keen, 150.

(*e*) 3 & 4 Vict. c. 77.

cation of any schoolmaster or undermaster (*f*); (2) that whenever, on account of the insufficiency of the revenues of any grammar school, the court should think fit to dispense with the teaching of Greek and Latin, analogous instruction should be substituted (*g*); (3) that the schools should still be considered as grammar schools, although Greek and Latin was dispensed with.

Under the Public Schools Act.

By the Public Schools Act, 1868 (*h*), the new governing bodies, constituted under that act, of all schools to which the act applied, were empowered to make, alter or annul regulations with respect (*inter alia*) to the introduction of new branches of study and the suppression of old ones, and the relative importance to be assigned to each branch of study (*i*).

Admission of non-free scholars to a free school.

§ 13. A somewhat similar question has often arisen in connection with schools, *i. e.*, where the founder's declared intention was that the school should be a free school, how far a scheme is allowable which sanctions the reception of boarders and non-free scholars to the school. It has been decided, independently of any statute, that boarders and paying scholars may, in certain cases, be received (*j*), though each case must be tried on its own merits (*k*); and now, by the Grammar Schools Act (*l*), the court may make

(*f*) Sect. 3.

(*g*) Sect. 5.

(*h*) 31 & 32 Vict. c. 118.

(*i*) Sect. 12, sub-s. 7.

(*j*) *Attorney-General* v. *Christ Church*, Jac. 474.

(*k*) *Re Bristol Grammar School*, 28 Beav. 161; 6 Jur. N. S. 285; 2 L. T. N. S. 74; *Attorney-General* v. *Earl of Stamford*, 16 Sim. 453; *Attorney-General* v. *Gloucester*, 28 Beav. 438.

(*l*) 3 & 4 Vict. c. 77, s. 1. See the cases, since the act, of *Attorney-General* v. *Worcester*, 9 Hare, 358; *Re Latymer's Charity*, L. R. 7 Eq. 353; 17 W. R. 525; 20 L. T. N. S. 425; *Manchester School Case*, L. R. 2 Ch. 497; 15 W. R. 805; 16 L. T. N. S. 505; 36 L. J. N. S. Ch. 544.

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such decrees or orders as it shall deem expedient for extending or restricting the freedom or the right of admission to a grammar school, as defined by that act, by determining the number or the qualifications of boys who may thereafter be admissible thereto, as free scholars or otherwise, and for settling the terms of admission to, and continuance in the same.

By schemes under the Endowed Schools Acts, the Commissioners may alter the application of any educational endowment under those acts in such manner as may render it most conducive to the advancement of the education of boys and girls (*m*).

(*m*) 32 & 33 Vict. c. 56, s. 9.

CHARITABLE TRUSTS ACT, 1853.

16 & 17 Vict. c. 137.

An Act for the better Administration of Charitable Trusts. [20th August, 1853.

16 & 17 Vict. c. 137.

Whereas it is expedient to provide means for securing the due administration of charitable trusts, and for the more beneficial application of charitable funds in certain cases; be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

The circumstances under which this act was passed, and the objects which the framers of it had in view, were stated by L.JJ. Selwyn and Wood in the case of *Braund* v. *The Earl of Devon* (*a*). The act was intended "to put an end to certain very scandalous proceedings on the part of individuals who, ascertaining that there was a fund disposable for the purpose of charities which had been overlooked, and thinking that a considerable profit might be made in the way of costs, instituted proceedings which were not likely to produce good to any one" (*b*). The construction of the act cannot, however, be confined within the mischief which it is known to have intended to remedy (*c*).

Her Majesty empowered to appoint Charity Commissioners, secretary and inspectors.

1. It shall be lawful for her Majesty and her successors, by warrant under the royal sign manual, to appoint four commissioners, and also one secretary and two inspectors, for the purposes of this act, and upon any vacancy by the

(*a*) L. R. 3 Ch. 800; 16 W. R. 1180; 37 L. J. N. S. Ch. 463; 18 L. T. N. S. 784; see *post*, p. 101.

(*b*) Per Wood, L. J., *ibid.*

(*c*) See *post*, p. 102.

16 & 17 Vict. c. 137, s. 1.

death, resignation, or removal of any commissioner, secretary, or inspector under this act, from time to time in like manner to appoint another person to succeed to such vacancy, and until a fresh appointment shall be made it shall be lawful for the surviving or continuing commissioners, in case of any vacancy, to act as if no such vacancy had occurred; and three of the said commissioners shall hold office during good behaviour; and the fourth, and every secretary and inspector to be appointed under this act, shall hold office during the pleasure of her Majesty.

Qualification of commissioners.

2. The said three commissioners so holding office during good behaviour shall be paid as hereinafter mentioned, and two at least of the said paid commissioners for the time being shall be barristers-at-law of not less than twelve years standing at the time of their respective appointments, and one of such barristers shall be the chief commissioner, and shall be so called and distinguished in his appointment.

Officers of the board.

3. The said commissioners, with the sanction of the Commissioners of Her Majesty's Treasury, shall from time to time appoint such clerks and messengers as the said commissioners may think fit, and all persons appointed under this provision shall hold their offices during the pleasure of the said commissioners.

Salaries.

4. There shall be paid to the said paid commissioners, and to the said secretary, inspectors, clerks, and messengers, such salaries not exceeding for the chief commissioner the annual sum of one thousand five hundred pounds, and for each of the other paid commissioners the annual sum of one thousand two hundred pounds, and for the said secretary the annual sum of six hundred pounds, and for each of the said inspectors the annual sum of eight hundred

pounds, as shall be from time to time allowed by the Commissioners of Her Majesty's Treasury, who may also allow to every commissioner, inspector, and other person appointed for the purposes of this act such reasonable travelling and other expenses as may be incurred by him in the execution of his office, and the said salaries and expenses, and the incidental expenses of the said board, shall be paid out of any monies, which may be from time to time provided by Parliament for that purpose: provided always, that after the thirty-first day of March in the year one thousand eight hundred and fifty-seven, the said annual salary shall be paid to one only of the said commissioners besides the said chief commissioner (*d*). 16 & 17 Vict. c. 137, s. 4.

5. No paid commissioner, secretary, or inspector to be appointed under this act shall be capable of sitting in the House of Commons during the tenure of his office. No paid commissioner, secretary or inspector, to sit in House of Commons.

6. The said commissioners to be appointed under this act shall be styled "The Charity Commissioners for England and Wales," and may have and use a seal for authenticating documents, and such commissioners shall sit from time to time as a board for carrying this act into execution; and any two of such commissioners may form a board, and may exercise all or any of the powers conferred on the commissioners or the board by this act (*e*). Style of commissioners, who may sit as a board.

7. The said board shall, by general minutes, from time to time prescribe regulations for their proceedings, and the proceedings of their inspectors, and concerning the form and manner of applications to the said board, and the conditions to be performed by applicants, and for the Board to frame general minutes.

(*d*) Repealed by sect. 2 of the Charitable Trusts Amendment Act, 1855.

(*e*) See sect. 4 of the Charitable Trusts Amendment Act, 1855.

16 & 17 Vict. c. 137, s. 7.

guidance of applicants in relation thereto, and all such general minutes shall be signed by three of the said commissioners at the least; and copies of all such general minutes shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be sitting, or if Parliament be not sitting, then within fourteen days after the next meeting thereof.

Minutes of proceedings and orders, &c. to be entered, and copies of entries signed by the secretary to be received in evidence.

8. The said board shall cause minutes of their proceedings, and all orders, certificates, and schemes, made or approved by them under this act, to be entered in books to be provided and kept for such purpose, and all such entries shall be signed by their secretary, and all copies purporting to be extracted from the books of the said board, and to be certified by their secretary, of any such minutes, orders, certificates, and schemes entered as aforesaid, shall be received as evidence of the proceedings to which such minutes shall relate, and of such orders, certificates, or schemes, and of the making or approval thereof (as the case may require) by the said board, without further proof thereof.

Board to inquire into condition and management of charities.

9. It shall be lawful for the said board from time to time, as they in their discretion may see fit, to examine and inquire into all or any charities in England or Wales, and the nature and objects, administration, management, and results thereof, and the value, condition, management, and application of the estates, funds, property, and income belonging thereto; and the said board may cause examinations and inquiries in relation to the matters aforesaid to be made and prosecuted by their inspectors, acting together or separately, in such cases and at such times as the said board may think fit; and all such inspectors shall from time to time report their proceedings to the said board.

16 & 17 Vict. c. 137, s. 10.

Power to require accounts and statements.

10. The said board may require all trustees or persons acting or having any concern in the management or administration of any charity, or the estates, funds, or property thereof, to render to the said board, or to their inspectors, or either of them, accounts and statements in writing in relation to such charity, or the funds, estates, property, income, or monies thereof, or the administration, management, and application thereof, and may also require such trustees and persons to return answers in writing to any questions or inquiries addressed to them by the direction of the said board relating to the matters aforesaid (*f*).

Officers having custody of records to furnish copies and extracts, if required by board.

11. All officers having the custody of enrolments, decrees, reports, records, and other documents relating to or concerning any charity shall furnish such copies or extracts as shall be required by the said board; and every inspector, secretary, and other officer of the said board for the time being employed for the purposes of this act shall be at liberty, by the authority and under the directions of the board, and subject to such regulations as the board may make in that behalf, to examine and search the registers and records of every court of law and equity, and every ecclesiastical court, and every public registry and office of records, and to take copies of and extracts from any decree or document recorded or registered or deposited therein respectively, for any purpose contemplated by this act, without fee or other payment in respect thereof (*g*).

(*f*) For amendment of sects. 10, 11, 12, 14, 15, see sects. 6, 7, 8, and 9 of the Charitable Trusts Amendment Act, 1855.

(*g*) Extended by sect. 49 of the Endowed Schools Act, 1869, to the commissioners and assistant-commissioners under that act. It is also extended by the City of London Parochial Charities Act, s. 38, to the assistant-commissioners under that act.

16 & 17 Vict. c. 137, s. 12.

Inspector may examine witnesses on oath.

12. Any inspector acting under the authority of the said board may, by precept under his hand, subject to such regulations as the said board may make in that behalf, require any person, being a trustee of any charity or otherwise acting or having any concern in the management or administration of any charity, or of the estates, funds, or property thereof, or in the receipt or payment of the income or monies thereof, or deriving any income or stipend therefrom, to attend before such inspector for the purpose of being examined by him touching or relating to such charity, or the estates, funds, property, or income thereof, at any time and place mentioned or appointed by such precept, and to bring and produce any deed, paper, writing, instrument, or other document, being in the custody, possession, or power of such person, and relating to such charity, or the estates, funds, property, or income thereof, and may examine upon oath all persons attending in pursuance of such precept, and all persons voluntarily attending before him, and may administer such oath: provided always, that no person shall be obliged to travel in obedience to any such precept more than ten miles from his place of abode.

Persons giving false evidence guilty of a misdemeanor.

13. If any person wilfully give false evidence upon any examination under this act, every person so offending shall be deemed guilty of a misdemeanor.

Person refusing to render accounts, &c., to be deemed guilty of a contempt of court.

14. If any person from whom the said board, or any inspector, is authorized to require any account or statement or answers to any questions or inquiries, or whose attendance any inspector is authorized to require, shall refuse or wilfully neglect to render to the said board such account or statement, or to make answers to such questions or inquiries, or to attend in obedience to any lawful precept of any in-

spector or to give evidence before him, or shall wilfully alter, destroy, withhold, or refuse to produce any deed, paper, writing, instrument, or other document which may be lawfully required to be produced before any inspector or the said board, every person so offending shall be deemed and taken to have been guilty of a contempt of the High Court of [Chancery] (*d*), and shall be liable to be attached and committed by such court on summary application by the commissioners to the same, and shall pay the costs of and attending such contempt as the said court shall direct. 16 & 17 Vict. c. 137, s. 14.

On a motion by the Charity Commissioners under this section and sect. 9 of the Charitable Trusts Amendment Act, 1855, to commit the churchwardens and vestry clerk of a parish for contempt of court in not delivering accounts of parish property when required by the Commissioners, it was held that the parish authorities must account to the Commissioners, parish property being, as was decided in *Attorney-General* v. *Webster* (*e*), charitable property, and as such subject to the Charitable Trusts Acts; but the Master of the Rolls (Sir George Jessel) refused to make any order against the clerk personally, as he was merely the officer of the churchwardens (*f*). A trustee of a charitable gift, who had the power of revoking it, but had not actually revoked, was held bound under this section, on pain of committal for contempt, to furnish to the commissioners accounts for the preceding two years (*g*).

15. Provided always, that nothing herein contained shall extend to give to the said board or their inspectors any power of requiring from any person holding or claiming to hold any property whatsoever adversely to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever in relation to the property so held or Saving for persons claiming adversely to charities.

(*d*) Substitute for this the word "Justice." See Supreme Court of Judicature Act, 1873, s. 16.

(*e*) L. R. 20 Eq. 483; 44 L. J. N. S. Ch. 766.

(*f*) *In re St. Bride's, Fleet Street, Church or Parish Estate*, W. N. (1877) pp. 95 and 149.

(*g*) *In re Sir Robert Peel's School at Tamworth, Ex parte The Charity Commissioners*, L. R. 3 Ch. 543; 16 W. R. 773; 37 L. J. N. S. Ch. 473; 18 L. T. N. S. 541.

16 & 17 Vict. c. 137, s. 15.

claimed adversely, or any charitable trust or charge alleged to affect the same.

It is not enough under this section for the person holding the property to say, "I claim to hold this fund adversely to the charity," when from the facts before the court it is plain that no adverse claim has ever really been set up (*h*). One who has no *locus standi* except under the charity cannot claim adversely to the charity, *e. g.* a schoolmaster claiming salary (*i*), or a medical officer of a hospital asking for an injunction against the governors to restrain them from disturbing him in his office and from ejecting him from his residence (*j*).

Board to entertain applications for their opinion or advice.

16. The said board shall receive and consider all applications which may be made to them by any trustee or other person having any concern in the management or administration of any charity, for their opinion, advice, or direction respecting such charity, or the management or administration thereof, or the estates, funds, property, or income thereof, or the application thereof, or any question or dispute relating to the same respectively, and, if they so think fit, may upon any such application give such opinion or advice as they think expedient, subject to any judicial order or direction which may be subsequently made or given by any competent court or judge; and such opinion or advice shall be in writing, signed by two or more of the said commissioners, and sealed with the seal of the said commission; and every trustee and other person who shall act upon or in accordance with the opinion or advice given by the said board shall in respect of so acting be deemed and taken, so far as respects his own responsibility, to have acted in accordance with his trust; and no such judicial order or direction subsequently made or given by any court or judge shall have any such

Persons acting on advice of board to be indemnified.

(*h*) *In re Sir Robert Peel's School at Tamworth, Ex parte The Charity Commissioners*, L. R. 3 Ch. 543.

(*i*) *Brittain* v. *Overton*, L. R. 25 Ch. D. 41, n.

(*j*) *Benthall* v. *Earl of Kilmorey*, L. R. 25 Ch. D. 39; 32 W. R. 69; 53 L. J. N. S. Ch. 298; 50 L. T. N. S. 137.

retrospective effect as to interfere with or impair the indemnity by this act given to trustees and other persons who have acted upon or in accordance with such opinion or advice of the said board: provided always, that nothing herein contained shall extend to indemnify any trustee or other person for any act done in accordance with the opinion or advice of the said board, if such trustee or other person have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion or advice (*k*). 16 & 17 Vict. c. 137, s. 16.

(*k*) *Form of Application for the Opinion, Advice or Direction of the Board* (C. T. Act, 1853, s. 16).

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the Matter of the Charity called* in the of in the county of

The undersigned, being†

submits the following statement:—

1.
2.
3.
4.
5, &c.

Under the foregoing circumstances, the undersigned makes application to the Board for their on the following points:

That is to say

1st.
2nd.
3rd.
4th, &c.

I declare that the above statement is in all respects true according to my information and belief.

Dated this day of 188

*

* Insert the usual name or designation of the charity, and the name of the parish, or place, if any, to which the charity is attached.

† A trustee or person concerned in the management or administration of the charity.

State here concisely and, as far as conveniently may be, in numbered paragraphs, the material facts and circumstances of the case.

Opinion, advice, or direction.

State here, as far as conveniently may be, in numbered paragraphs, the specific points upon which the opinion, advice, or direction is desired.

* The applicant should here sign his name, adding his profession or occupation and residence.

16 & 17 Vict. c. 137, s. 17.

Notice of legal proceedings as to any charity by any person, except the Attorney-General, to be given to the board.

17. Before any suit, petition, or other proceeding (not being an application in any suit or matter actually pending) for obtaining any relief, order, or direction concerning or relating to any charity, or the estate, funds, property, or income thereof, shall be commenced, presented, or taken by any person whomsoever, there shall be transmitted by such person to the said board notice in writing of such proposed suit, petition, or proceeding, and such statement, information, and particulars as may be requisite or proper, or may be required from time to time by the said board, for explaining the nature and objects thereof; and the said board, if upon consideration of the circumstances they so think fit, may, by an order or certificate signed by their secretary, authorize or direct any suit, petition, or other proceeding to be commenced, presented, or taken with respect to such charity, either for the objects and in the manner specified or mentioned in such notice, or for such other objects, and in such manner and form, and subject to such stipulations or provisions for securing the charity against liability to any costs or expenses, and to such other stipulations or provisions for the protection or benefit of the charity, as the said board may think proper; and such board, if it seem proper to them, may by such order or certificate as aforesaid require and direct that any proceeding so authorized by them in respect of any charity shall be delayed during such period as shall seem proper to and shall be directed by such board; and every such order or certificate may be in such form and may contain such statements and particulars as such board shall think fit; and (save as herein otherwise provided) no suit, petition, or other proceeding for obtaining any such relief, order, or direction as last aforesaid shall be entertained or proceeded with by the Court of Chancery, or by any court or judge, except upon and in conformity

Courts not to entertain proceedings as to charities, except upon certificate of the board.

with an order or certificate of the said board: provided always, that this enactment shall not extend to or affect any such petition or proceeding in which any person shall claim any property or seek any relief adversely to any charity.

16 & 17 Vict. c. 137, s. 17.

This section is construed very strictly, and, however pressing the circumstances may be, the consent of the board is required before anything in the nature of a "proceeding" within the meaning of the section can be commenced. Thus, in *Ex parte The Watford Burial Board* (*l*), where the time at which a parish burial ground would have to be closed was near, and the burial board by petition prayed the sanction of the court for the conveyance to the petitioners of a piece of land belonging to the parish for the purposes of a burial ground, the Vice-Chancellor (Sir W. P. Wood) refused to sanction the proposal unless the consent of the Charity Commissioners to the application were first obtained, and this though the Burial Boards Act was passed subsequently to the Charitable Trusts Act, 1853, and gave full power to take lands for the purposes of the act. If the sanction of the commissioners is not obtained where necessary, as in an action by a minister and churchwardens of a parish against the late churchwardens for the transfer to them of a charity fund consisting of consols standing in the names of the defendants, an order will be made staying all further proceedings with costs (*m*). The court has no jurisdiction to dispense with the sanction of the commissioners, where it is required by the statute, even with the consent of the parties to the application (*n*). However, in a recent case, where the consent of the commissioners to an application for payment out of court under sect. 69 of the Lands Clauses Act, 1845, had not been obtained, expense was saved by a conditional order being made for payment out on production of the certificate of the commissioners that the expenses for which payment out was required had been actually incurred (*o*).

It is a mistake to suppose that the consent of the commissioners is only required in cases which are within the mischief of the act. The act was intended to prevent cases, formerly of frequent occurrence, in which parties commenced suits nominally for the benefit of a charity, but really for the purpose of creating costs. But the object with which the particular section was passed cannot confine its operation, except so far as the terms

(*l*) 2 Jur. N. S. 1045; 27 L. T. 316.

(*m*) *Hodgson* v. *Foster*, W. N. (1877) 74.

(*n*) Per Jessel, M.R., in *Glen* v. *Gregg*, L. R. 21 Ch. D. 518; 31 W. R. 149; 47 L. T. N. S. 285; 51 L. J. N. S. Ch. 784 (explaining *The Attorney-General* v. *Sidney Sussex College, Cambridge*, L. R. 21 Ch. D. 514, n.; 15 W. R. 162; 15 L. T. N. S. 518, as not containing any deliberate decision of the Lord Chancellor upon the point).

(*o*) *In re Parson of St. Alphage*, W. N. (1886) 154.

16 & 17 Vict. c. 137, s. 17.

warrant such interpretation, to the particular cases which originated it. It was impossible to distinguish in an Act of Parliament the motives of those who might afterwards be induced to institute suits respecting charities, and therefore the legislature thought it right that in the case of every suit with reference to the administration of charitable funds there should be a preliminary application to the commissioners (*p*). It would seem that in commencing any proceeding it should be stated that the certificate of the board has been given; as it has been held that a bill in a charity case asking for relief within the meaning of this section should contain such an allegation (*q*).

The section applies as well to suits for the establishment of a charity as to suits respecting charities already established. Thus the sanction of the commissioners was held necessary, where a testator had given his pure personal property to trustees upon trust to found and support a school for the gratuitous education of boys, preference being given to the lineal descendants of his grandfather, and a bill was filed by three of the lineal descendants against the trustees and executors praying for the administration of the estate, and that provision might be made for their education (*r*).

"*Suit, petition, or other proceeding.*"—An action for a mandamus against a collegiate body to compel them to render accounts, has been held to be a "proceeding" within the meaning of these words (*s*). So, also, an action by a medical officer against governors of a hospital asking for an injunction to restrain them from disturbing him in his office, and from ejecting him from his residence, as well as from closing the list of provident members and suspending the work of the hospital. Chitty, J., held that the last two claims at any rate brought him within the meaning of the words, a proceeding "for obtaining any relief, order, or direction concerning or relating to any charity, or the estate, funds, property, or income thereof." It was held on appeal that, if the action had any object beyond preventing the defendants from excluding the plaintiff from his office and house, it clearly required the sanction of the Charity Commissioners (*t*). On the other hand, the consent of the commissioners need not be obtained before the commencement of an action by governors of a school against a schoolmaster not properly appointed, but refusing to quit the schoolhouse, for an injunction to restrain him from presenting himself at the school or teaching therein, and an injunction to restrain him from remaining in occupation of the schoolhouse or land belonging thereto. It was held, that the section was never intended to interfere with the

(*p*) Per L.JJ. Selwyn and Wood in *Braund* v. *Earl of Devon*, L. R. 3 Ch. 800; 16 W. R. 1180; 37 L. J. N. S. Ch. 463; 18 L. T. N. S. 784.

(*q*) *Braund* v. *Earl of Devon*, *sup.*

(*r*) *Ibid.*

(*s*) *Attorney-General* v. *Dean and Canons of Manchester*, L. R. 18 Ch. D. 596; 50 L. J. N. S. Ch. 562; 45 L. T. N. S. 184.

(*t*) *Benthall* v. *The Earl of Kilmorey*, L. R. 25 Ch. D. 39; 32 W. R. 69; 53 L. J. N. S. Ch. 298; 50 L. T. N. S. 137.

16 & 17 Vict. c. 137, s. 17.

rights or powers of the trustees of a charity in their character of owners of property, or to interfere with their rights in the character of masters who are employing servants (*u*). It is different where an action is brought by a schoolmaster against trustees, alleging that the defendants refused to pay him his income, and further, that they had funds in their hands applicable to the payment of his income, and claiming that an account might be taken of all moneys received by the trustees of the charity since a certain date or then in the hands of the defendants as such trustees. "This case," said Jessel, M.R., "is merely that of a man claiming to be a recipient of part of the proceeds of a charity asking the court to administer the trusts of the charity for the purpose of getting the benefit of the charity." It was an equity suit such as could only have been brought in the old Court of Chancery if the Judicature Acts had not been passed. It was an account against trustees for their receipts and for all proper allowances, and clearly required the consent of the commissioners (*x*). Such a case could not be brought within the proviso at the end of the section. "Any such petition or proceeding in which any person shall claim any property, or seek any relief adversely to any charity," refers, said Jessel, M.R., "to a case in which, pending a Chancery suit, you might by petition, which was the proper mode, claim *pro interesse suo*, or where you might take a proceeding in equity where you could not bring an action at law. For instance, the legal estate might be outstanding, or you might claim money by suit in equity, on the ground that it was the proceeds of land not well given to the charity. These things are the subject of relief adversely to the charity, that is, you do not claim under the charity trusts, alleging that the claim is for property not affected by the charity trusts. That is what I understand by claiming adversely to the charity. But in this case the claimant is one of the objects of the charity" (*y*).

Where powers were given to trustees of a charity by a special act, prior to the Charitable Trusts Act, 1853, with the approbation of the Court of Chancery, to sell or exchange any part of the lands belonging to the charity, and make any applications which might be necessary before one of the judges of the Court of Chancery in chambers, it was held that the trustees must first obtain the certificate of the Charity Commissioners under the present section before making application to a judge in chambers for liberty to sell part of the charity estate (*z*).

"*Not being an application in a suit or matter actually pending.*"—The meaning of this exception has been discussed in a long line of cases, and there has been considerable divergence in the decisions on the question,

(*u*) *Holme* v. *Guy*, L. R. 5 Ch. D. 901; 25 W. R. 547; 46 L. J. N. S. Ch. 648; 36 L. T. N. S. 600.

(*x*) *Brittain* v. *Overton*, L. R. 25 Ch. D. 41, n.

(*y*) *Brittain* v. *Overton*, L. R. 25 Ch. D. 43, n. See also sect. 41 of this act.

(*z*) *In re The Bingley School and Charity Estate Act*, 23 L. J. N. S. Ch. 672; 2 W. R. 433; 2 Drew. 283; 23 L. T. 139; 2 Eq. Rep. 635.

16 & 17 Vict. c. 137, s. 17.

whether or not a petition for the re-investment of trust moneys already in court was "an application in a suit or matter actually pending." The earliest case was *In re Markwell's Legacy* (*a*), in which it was held that payment into court by trustees under the Trustee Relief Act was not a pending proceeding within the words of the act, and, therefore, where the residue of trust income had been given by the testator towards the education of the offspring of certain of his relatives named in the will, and the education of as many poor children in Holy Island as the dividends would allow, a petition subsequent to the payment into court that such residue might be applied in increasing the efficiency of the parish school, required the sanction of the commissioners. In the same way, where the purchase-money of charity land, taken by a railway company under their compulsory powers, had been paid by them into court under the provisions of the Lands Clauses Consolidation Act (*b*), a petition by the governors of the charity praying permission to apply part of the moneys so in court in redeeming part of the land tax of other land which remained unredeemed, was held irregular, the certificate of the Charity Commissioners not having been first obtained (*c*). But these cases, decided by Romilly, M.R., in the year after the passing of the act, must be regarded as overruled by the case of *In re Lister's Hospital* (*d*), decided by Lord Chancellor Cranworth, in conjunction with the Lords Justices, in the following year. The purchase-money of charity lands, taken by a railway company, having been paid into court by the company, as in the case last mentioned, it was held that a petition to have a part of it applied in the purchase of other lands in substitution of the lands taken, a further part applied in the redemption of the land tax, and the residue paid into the hands of the trustees for the general purposes of the charity, was "an application in a suit or matter actually pending." Vice-Chancellor Wood had, earlier in the same year, given a similar decision in *In re Cheshunt College* (*e*). In that case the purchase-money of freehold lands belonging to Cheshunt College, and sold to the New River Company under their Act of 1852, in which the Lands Clauses Consolidation Act, 1845 (*f*), was incorporated, had been paid into court, and the application was to have part of such purchase-money laid out in enfranchising a copyhold which was vested in one of the petitioning trustees and the respondent upon the same trusts for the college as the land sold. Without actually deciding whether the application was in a suit or matter actually pending, the Vice-Chancellor held that the court could entertain the petition under the Lands Clauses Consolidation Act, 1845 (*g*).

(*a*) 17 Beav. 618.

(*b*) 8 & 9 Vict. c. 18.

(*c*) *In re The London, Brighton and South Coast Rail. Co.*, 18 Beav. 608. See also *In re Skeates*, 1 Jur. N. S. 1037; 4 W. R. 28; 25 L. J. N. S. Ch. 49; 26 L. T. 67.

(*d*) 6 De G. M. & G. 184; 4 W. R. 656; 26 L. T. 192.

(*e*) 1 Jur. N. S. 995; 3 W. R. 638.

(*f*) 8 & 9 Vict. c. 18.

(*g*) Sect. 70.

16 & 17 Vict. c. 137, s. 17.

"The good sense of the matter," said the Lord Chancellor, in *In re Lister's Hospital* (*h*), "is with the opinion expressed by his Honor, and there is nothing in the language of the act against it." On this decision Sir John Romilly himself acted in a later case (*i*), in which a petition was presented, praying that it might be referred to chambers to approve of a proper scheme for the future application of certain charity funds which had been paid into court under the Trustee Relief Act. It does not follow from these cases that the funds themselves when invested will be transferred by the court into the name of trustees of the charity without the consent of the Charity Commissioners, when such trustees have no power of sale (*k*). The court will, without the consent of the commissioners, merely make an order for the investment of the funds and payment of the dividends to the trustees. Anything more than this would amount to a new proceeding.

The exception does not apply, where, although a suit or matter has preceded with which the application in question is more or less connected, the application is in effect a new one, *e.g.*, where a petition had been presented under Sir Samuel Romilly's Act (*l*), upon which an order had been made for a scheme, and afterwards another petition was presented for the confirmation of a contract entered into by the trustees in the course of carrying that scheme into effect. A final order having been made upon the first petition, such petition could not be described as a "matter actually pending" (*m*).

In the earlier case of *Re Ford's Charity* (*n*), an order had been made under Sir S. Romilly's Act (*o*) with regard to charity funds brought into court, and a scheme had been approved; afterwards a petition was presented for the erection of a new school with part of the charity funds. This was held not to be "an application in a suit or matter actually pending," and the consent of the commissioners was therefore required. "If," said Kindersley, V.-C., "the application had been merely to add new rooms to an existing school, it might not perhaps have been necessary to obtain the commissioners' sanction; but this is to establish a new school."

The consent of the board can only be shown by the production of their *certificate*, and the production of a letter signed by the secretary, and stating that the board were prepared to issue their certificate, was held to be an insufficient sanction, even to so pressing an application

(*h*) 6 De G. M. & G. 184; 4 W. R. 656; 26 L. T. 192.

(*i*) *In re St. Giles and St. George, Bloomsbury*, 4 Jur. N. S. 297; 6 W. R. 434; 31 L. T. 112; 25 Beav. 313; cf. *In re William of Kyngeston Charity*, 30 W. R. 78.

(*k*) *Re Faversham Charities*, 10 W. R. 291; 5 L. T. N. S. 787; cf. *Ex parte The Governors of the Charity for Relief of Widows and Children of Norfolk Clergy*, W. N. (1882) 53.

(*l*) 52 Geo. III. c. 101.

(*m*) *In re Jarvis' Charity*, 5 Jur. N. S. 724; 7 W. R. 606.

(*n*) 3 Drew. 324.

(*o*) 52 Geo. III. c. 101.

16 & 17 Vict. c. 137, s. 17.

as one for an interim injunction for the protection of charity property (*p*).

The appointment of a trustee to pay a charity fund into court is not a "proceeding" within the meaning of the section, and the sanction of the commissioners is not therefore necessary to an application for such appointment (*q*), neither is there anything in the act which prohibits charity trustees from paying their trust fund into court under the Trustee Relief Act if they choose. But the result of their doing so is to relieve them from the duty of administering the trust, through their ceasing to be trustees; and therefore a petition by them to the court asking for a scheme with respect to the fund which they had paid in, proved abortive, and the trustees themselves were made to pay the costs of preparing it (*r*). A charity may be exempted from the operation of this section by reason of its coming within one of the general exemptions from the operation of the act mentioned in sect. 62. Thus, the consent of the board is not required to an action for administration of the trusts of a deed providing for and regulating the mode of worship in a building *bonâ fide* used as a place of meeting for public worship, and duly registered as such (*s*). Where charity funds are connected with a college or collegiate institution, if the proceeding is one affecting trusts of which the college is the object, the consent of the Charity Commissioners need not be obtained, as the case is within the exemptions of sect. 62; but if the purpose of the "proceeding" is to effect an end of which another charity is the object, the consent of the commissioners must, in spite of sect. 62, be first obtained (*t*). So, where the dean and canons of a collegiate institution had to pay the residue of their revenues to the Ecclesiastical Commissioners, for certain parishes and districts, the consent of the board to an action of account against them by the beneficiaries was required (*u*).

A college at one of the universities is clearly within the exceptions of sect. 62, but Lord Chelmsford, in the case of *Attorney-General* v. *Sidney Sussex College* (*x*), showed great hesitation in excluding such an institution from the protection which sect. 17 affords. "The 17th section of the act," he said, "was imperative, but it had been argued that the

(*p*) *Thomas* v. *Harford*, 48 L. T. N. S. 262.

(*q*) *Re St. Giles' Volunteer Corps*, 25 Beav. 313; 6 W. R. 434; 31 L. T. 112; 4 Jur. N. S. 297.

(*r*) *In re Poplar and Blackwall Free School*, L. R. 8 Ch. D. 543; 26 W. R. 827; 39 L. T. N. S. 88.

(*s*) *Glen* v. *Gregg*, L. R. 21 Ch. D. 513; 31 W. R. 149; 47 L. T. N. S. 285; 51 L. J. N. S. Ch. 784. See also 18 & 19 Vict. c. 81, s. 9 (The Places of Religious Worship Registration Act).

(*t*) *In re Meyricke's Charity*, 1 Jur. N. S. 438; 3 W. R. 435; 25 L. T. 92.

(*u*) *Attorney-General* v. *Dean and Canons of Manchester*, L. R. 18 Ch. D. 596; 50 L. J. N. S. Ch. 562; 45 L. T. N. S. 184.

(*x*) 21 Ch. D. 514, n.; 15 W. R. 162; 15 L. T. N. S. 518. See, however, *Glen* v. *Gregg*, L. R. 21 Ch. D. 518, 519, cited above, p. 101.

62nd section rendered the 17th inapplicable to a case like this. It would be strange if it were so, as then a clause intended for the benefit of the colleges and universities would be turned to their disadvantage, as informations might be filed against them without the protection of the fiat (*i.e.*, the certificate of the commissioners). The objection, if persisted in, must prevail" (*y*). 16 & 17 Vict. c. 137, s. 17.

The objection to a proceeding on the ground that the sanction of the commissioners has not been obtained as directed by this section may be raised by a motion to stay further proceedings; and need not have been by demurrer or plea under the old procedure, nor need it be by the proceeding in lieu of demurrer or defence under the present practice (*z*).

An interest recognized by sect. 3 of the Municipal Corporations Act, 1835, as vested in freemen of a borough and claimed by reference to that act, is not a charity for the purpose of requiring the consent of the commissioners before proceedings with respect to it can be brought. The plaintiffs were held entitled upon the ground of the recognition by the act of their vested interest, and they were not, under such circumstances, to be deemed to be taking it only as a charitable disposition in their favour (*a*).

Form of Application for an Order or Certificate of the Board authorizing any Suit or other Proceeding before any Court or Judge (C. T. Act, 1853, s. 17).

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of the Charity called*
in the of
in the county of

The undersigned, being†

submits the following notice and statement:—

1.
2.
3.
4.
5.
6.
7.

* Insert the usual name or designation of the charity, and the name of the parish, township, or place for the benefit whereof the charity was founded, or in which it is administered.

† The applicant should here state whether or not he is trustee, or person administering or claiming to administer, or interested in the charity, or an inhabitant of the parish or place within which the charity is administered or applicable.

State here concisely, and as far as conveniently may be, in numbered paragraphs, all the material facts and circumstances of the case.

(*y*) See also the cases cited on sect. 62.

(*z*) *Hodgson* v. *Forster*, W. N. (1877) 74.

(*a*) *Prestney* v. *Mayor and Corporation of Colchester*, L. R. 21 Ch. D. 111.

16 & 17 Vict. c. 137, s. 17.

8.

9.

10.

Under the foregoing circumstances, the undersigned is desirous of instituting proceedings for effecting the following objects:

State here, as far as conveniently may be, in numbered paragraphs, the specific objects for which proceedings are proposed to be taken.

That is to say

1st.

The undersigned accordingly requests the Board to issue an order and certificate authorizing him to make an application to

Describe the court or judge.

for effecting the above objects.

I declare that the above statement is in all respects true according to my information and belief.

Dated this day of 18 .

* The applicant should here sign his name, adding his profession or occupation and residence.

*

Saving for the Attorney-General acting *ex officio*.

18. Provided always, that it shall be lawful for her Majesty's Attorney-General acting *ex officio* to make such applications, and take and prosecute such proceedings with respect to any charity, in the Court of Chancery or otherwise as to him may seem fit, as if this act had not been passed; and that nothing in this act contained shall be construed as dispensing with the fiat or allowance of her Majesty's Attorney-General, with respect to any proceeding not being an application under the jurisdiction created by this act where such fiat or allowance was necessary before the passing of this act.

The fiat of the Attorney-General is required for petitions under Sir Samuel Romilly's Act (*b*). In other suits, dealing with money appropriated for general charitable purposes, the Attorney-General must be made a party, except, it is said, where trustees have been appointed by the donor of the charitable fund (*c*). This exception, depending on a reporter's note in Viner's Abridgment, is hardly borne out by the more recent case cited in Daniell (*d*), where a decree in a suit against the

(*b*) Daniell's Chancery Practice, p. 2044.

(*c*) *Ibid.*, pp. 157 and 158.

(*d*) *Attorney-General* v. *Warren*, 2 Swan. 291.

trustees of a charity, to which the Attorney-General was not a party, having directed them to perform an agreement with the plaintiff in that suit for granting a lease of tithes, an information by the Attorney-General, at the relation of the trustees, against the person claiming under the plaintiff in the former suit, for an account of tithes, was dismissed. The information did not seek to impeach the decree in the former suit, on the ground of the absence of the Attorney-General, and the point therefore did not need decision. 16 & 17 Vict. c. 137, s. 18.

Board may, upon the report of an inspector, authorize proceedings, where no notice has been given to them, and may in other cases cause local inquiries by their inspector.

19. Provided also, that where upon any report of any inspector under this act or otherwise it appears to the said board that any suit, petition, or other proceeding concerning or relating to any charity, or the estate, funds, property, or income thereof, would be proper or expedient, it shall be lawful for the said board by their order to authorize or direct such suit, petition, or proceeding to be commenced, presented, or taken, and to give such directions in relation thereto as the said board may think proper; and thereupon such suit, petition, or proceeding may be commenced, presented, or taken accordingly, without any such previous notice in writing as hereinbefore mentioned; and the said board before giving any such opinion, advice, or direction upon any such application as aforesaid, or making any such order or certificate after notice to them as aforesaid, may, where local inquiry appears to them to be requisite, cause such inquiry to be made by one of their inspectors; and the said board may, in any case where they see fit, before acting upon the report of any inspector, cause such report to be deposited for local inspection, and give notice of the same being so deposited, and consider any statements or objections which may be transmitted to them in relation thereto.

Power for board to certify certain cases to the Attorney-General.

20. In any case in which it shall appear to the said board that the institution of legal proceedings is requisite or desirable with respect to any charity, or the estates, funds, property, or affairs thereof, and that under the

16 & 17 Vict. c. 137, s. 20.

circumstances thereof it is desirable that such proceedings shall be instituted by the Attorney-General, it shall be lawful for the said board, if they so think fit, to certify such case, in writing under the hand of the secretary of the said board, to her Majesty's Attorney-General, together with such statements and particulars (if any) as in the opinion of the said board may be requisite or proper for the explanation of such case; and thereupon the said Attorney-General, if upon consideration of the circumstances he think fit, shall institute and prosecute such legal proceedings as he shall consider requisite or proper under the circumstances of such case, by information or petition in the Court of Chancery, or by application to a judge thereof at chambers, or to a [district court of bankruptcy, or] (*e*) county court under the jurisdiction given by this act.

Board may sanction building leases, working mines, doing repairs and improvements;

21. If in any case it appear to the trustees or persons for the time being acting in the administration or management of any charity, or the estates or property thereof, that any part of the charity lands or estates may be beneficially let on building, repairing, improving, or other leases, or on leases for working any mine, or that the digging for or raising of stone, clay, gravel, or other minerals, or the cutting of timber, would be for the benefit of the charity, or that it would be for the benefit of such charity that any new road or street should be formed or laid out, or any drains or sewers made through any part of the charity estates, or that any new building should be erected, or that any existing building should be repaired, altered, rebuilt, or wholly removed, or that any other improvements or alterations in the state or condition of the

(*e*) Repealed by the Statute Law Revision Act, 1875; see on sect. 32 of this Act.

lands or estates of such charity should be made, it shall be lawful for such trustees or persons to lay before the said board a statement and proposal in relation to any of the matters aforesaid; and it shall be lawful for the said board, if they think that the leases or acts to which the statement and proposal relate (with or without modifications or alterations) would be beneficial to the charity, to make such order under their seal for and in relation to the granting of such leases, or the doing of any other such acts as aforesaid, and any circumstances connected therewith, as they may think fit, although such leases or acts respectively shall not be authorized or permitted by the trust (*f*); and the said board, by any such order, may authorize the application of any moneys or funds belonging to the charity for any of the purposes or acts aforesaid, and, if necessary, may authorize the trustees to raise any sum of money by mortgage of all or any part of the charity estates (*g*); [provided that compulsory provisions be reserved in every such mortgage for the payment of the principal money borrowed by annual instalments, and for the redemption and re-conveyance of the mortgaged estates, within the period of not more than thirty years (*h*)].

16 & 17 Vict. c. 137, s. 21.

and may authorize the application of the charity funds or the raising of money on mortgage for those purposes.

A clause in a scheme which provided for the granting of building leases on certain specified terms with the sanction of the Charity Commissioners, was struck out on the ground that the charity could be efficiently worked under the powers conferred on the commissioners by this act, and that no scheme might alter or add to the regulations as to the leasing of charity lands contained in this section (*i*).

(*f*) See sect. 38 of the Charitable Trusts Amendment Act, 1855, by which the operation of the disabling acts 13 Eliz. c. 10, 14 Eliz. cc. 11 and 14, 18 Eliz. cc. 6 and 11, 39 Eliz. c. 5, 21 Jac. I. c. 1, is excluded from leases made under direction of the board.

(*g*) See sect. 15 of the Charitable Trusts Act, 1860.

(*h*) Repealed by sect. 30 of the Charitable Trusts Amendment Act, 1855.

(*i*) *In re Smith's Charity* (*Hartlepool*), L. R. 20 Ch. D. 516.

16 & 17 Vict. c. 137, s. 22.

Commissioners to authorize trustees to remove officers.

22. It shall be lawful for the board, upon proof to their satisfaction that any schoolmaster or schoolmistress or other officer of any charity has been negligent in performing his or her duties, or that he or she is unfit or incompetent to discharge them properly, either from immoral conduct, age, or any other cause whatsoever, to empower the trustees of such charity to remove such schoolmaster or mistress or other officer, and to charge the salary of his or her successors, or any other portion of the revenues of the charity, with such retiring pension or allowance, if any, in favour of the person so removed, and generally to impose such conditions as to the said board shall appear proper: provided always, that where there shall be any special visitor of the charity, the consent of such visitor, in writing under his hand, shall be necessary in order to such removal (*j*).

Board may sanction compromise of claims on behalf of charity.

23. If in any case it appear to the trustees or persons acting in the administration of any charity that any claim or demand or cause of suit against any person in relation to such charity may, with advantage to the charity, or should under the special circumstances of the case, be compromised or adjusted without taking or without continuing any proceedings at law or in equity, such trustees or persons may, or the person against whom such claim, demand, or cause of suit exists or is alleged to exist, may, with the consent of the trustees or persons acting in

(*j*) As to the removal from possession of the charity buildings and property of schoolmasters and other officers of a charity deprived of their office under this section, see the Charitable Trusts Act, 1860, s. 13. The same act in sect. 14 allows the trustees or persons acting in the administration of a charity to pass a resolution for the removal of a schoolmaster or schoolmistress, but such resolution is not to take effect until approved by the Board of Charity Commissioners. Endowed grammar schools are excepted.

the administration of such charity, submit to the said board a statement and proposal for such compromise or adjustment; and if it appear to the said board after such inquiry in relation thereto by one of their inspectors, as they may deem requisite, or otherwise, that such proposal, either with or without any modification is fit and proper, and for the benefit of the charity, it shall be lawful for the said board to make such order for and in relation to such compromise or adjustment as they may think fit; and upon the due performance of the terms and conditions of such compromise or adjustment as aforesaid, such agreement shall be a final bar to all actions, suits, claims, and demands by or on behalf of the charity concerned therein, in respect to the cause of action, suit, or matter in respect to which such compromise or adjustment shall have been made (*k*). 16 & 17 Vict. c. 137. s. 23.

24. Upon application to the said board by the trustees or persons acting in the administration of any charity, representing to the said board that, under the special circumstances of any land belonging to the charity, a sale or exchange of such land can be effected on such terms as to increase the income of the charity, or would otherwise be advantageous to the charity, such board may, if they think fit, inquire into such circumstances, and if after inquiry they are satisfied that the proposed sale or exchange will be advantageous to the charity may authorize the sale or exchange, and give such directions in relation thereto, and for securing the due investment of the money arising from any such sale, or by way of equality of exchange for the benefit of the charity, as they may think fit (*l*). Board, under special circumstances, may authorize sale or exchange of charity lands.

(*k*) Extended by s. 31 of the Charitable Trusts Amendment Act, 1855, to compromise of suits against the charity.

(*l*) See Charitable Trusts Amendment Act, 1855, ss. 29, 32, 34, 35, and 36, and the Charitable Trusts Act, 1869, s. 12.

16 & 17 Vict. c. 137, s. 24.

The power of authorizing a sale of charity lands given to the commissioners by this section was held not to be taken away by the Allotments Extension Act, 1882, in a case where common lands had been vested in the rector, churchwardens and overseers of a parish for charitable purposes by a local act of 49 Geo. III. (*m*).

Forms of application (as issued by the Charity Commission) for the authority of the board for a sale or exchange under this section are appended.

Form of Application for the Authority of the Board for a Sale (C. T. Act, 1853, s. 24).

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of the charity called*
in the of
in the county of

The undersigned being the†

of the above-named charity, and being of opinion that a sale of the property hereinafter mentioned will be advantageous to the charity, hereby request the board to inquire into the circumstances, and if, after inquiry, the board are satisfied that the proposed sale will be advantageous to the charity, to authorize the said sale, and give such directions in relation thereto, and for securing the due investment of the money arising from such sale, as the board may think fit.

* Insert the usual name or designation of the charity, and the name of the parish, township or place for the benefit whereof the charity was founded, or in which it is administered.

† Trustees or persons acting in the administration.

State,

1. The mode and date of the appointments of the existing trustees (if any) of the charity, and the number originally appointed.

2. The general objects of the foundation.

3. Whether the charity estate is legally vested in the trustees, and, if so, by what conveyance or assurance?

(*m*) *Parish of Sutton to Church*, L. R. 26 Ch. D. 173; 32 W. R. 485; 53 L. J. N. S. Ch. 599; 50 L. T. N. S. 387.

16 & 17 Vict. c. 137, s. 24.

4. The name of the township, parish and county in which the particular property proposed to be sold is situate.

5. The nature, extent and description of the property proposed to be sold, and whether it forms the whole or part only of the charity estate.

6. The manner in which the property to be sold has been let or occupied during the last three years.

7. The amount of the gross annual rent or income arising therefrom during each of the last three years.

8. The amount and particulars of the outgoings or deductions from such rent or income in each of such years.

9. The present annual letting or rack-rent value of the property to be sold.

10. The special circumstances under which the sale is proposed, and the advantages likely to result to the charity therefrom.

11. Whether the sale is proposed to be made by public auction or private contract, and whether any offer for the purchase thereof has been received, and the terms of such offer (if any).

12. The name, description and address of the person by whom any such offer has been made.

13. The manner in which it is proposed that the purchase-money shall be invested.

NOTE.—It is the practice of the commissioners to require that, in the absence of special circumstances justifying a departure from the rule, the purchase-money shall be invested in the government funds in the name of the official trustees of charitable funds in trust for the charity.

14. The name and address of any surveyor by whom the property has been or is proposed to be surveyed and valued on behalf of the charity.

NOTE.—If there is any report or valuation, or any map or plan of the property, the same should be sent herewith. The commissioners will, if

16 & 17 Vict. c. 137, s. 24.

they think fit, require the property to be surveyed and valued, and the proposed sale to be reported on or approved by a surveyor appointed by themselves.

We declare that the foregoing statement is in all respects true according to our information and belief.

Dated this day of 18 .

*

* The date and the signatures and the personal descriptions and addresses of each individual applicant should be added here. Each signature should begin a separate line.

If the applicants be a corporate body their seal should be attached.

Form of Application for the Authority of the Board for an Exchange (C. T. Act, 1853, s. 24).

To the Charity Commissioners for England and Wales.

In the matter of the charity called*

in the of
in the county of .

The undersigned being the†

* Insert the usual name or designation of the charity, and the name of the parish, township or place for the benefit whereof the charity was founded, or in which it is administered.

† Trustees or persons acting in the administration.

of the above-named charity, and being of opinion that, under the special circumstances mentioned in the subjoined statement, an exchange of the particular property therein also mentioned, and belonging to the charity, can be effected on such terms as to increase the income thereof or to be otherwise advantageous to the charity, hereby request the board to inquire into such circumstances; and if, after inquiry, the board are satisfied that the proposed exchange will be advantageous to the charity, to authorize such exchange, and to give such directions in relation thereto, and for securing the due investment of the money to be paid by way of equality of exchange (if any) for the benefit of the charity, as the board may think fit.

State,

1. The mode and date of the appointments of the existing trustees (if any) of the charity, and the number originally appointed.

2. Whether the charity property is legally vested in such trustees, and, if so, by what conveyance or assurance.

16 & 17 Vict. c. 137, s. 24.

[*An account of the property to be exchanged and taken in exchange is to be here inserted.*

The particular Property hereinbefore referred to, and belonging to the said Charity, and proposed to be exchanged, is situate in the township of , in the Parish of , in the County of , and is described as follows:—

Description.	Extent.	How let or occupied.	Present Gross Annual Value.	Deductions.

The Property proposed to be exchanged for the Lands and Hereditaments hereinbefore described is situate in the township of , in the Parish of , in the County of , and is described as follows:—

Description.	Extent.	How let or occupied.	Present Gross Annual Value.	Deductions.

]

3. The estate and interest of the charity in the property proposed to be exchanged.

4. Whether the charity is possessed of property in addition to that proposed to be exchanged.

5. The special circumstances under which the exchange is proposed, and the advantages likely to result to the charity therefrom.

16 & 17 Vict. c. 137, s. 24.

6. The name, quality, profession, or occupation and address of the person with whom the exchange is proposed to be made.

7. The estate or interest of such person in the property to be given by him in exchange.

8. The manner in which the property to be given in exchange and the property to be received in exchange by the charity have respectively been let or occupied during the last three years; and the amount of the gross and net annual rents or income arising therefrom during the same period.

9. The amount of the money (if any) to be received or paid by way of equality of exchange.

10. The manner in which the money (if any) to be so received by the charity is proposed to be invested and secured, or in which any money to be so paid by the charity is proposed to be raised or provided.

11. The name and address of any surveyor by whom the properties to be given and taken in exchange respectively have been or are proposed to be surveyed and valued on behalf of the charity.

NOTE.—If there is any report or valuation, or map or plan of the properties referred to, the same, or a copy of each, should be sent herewith. The commissioners will, if they think fit, require such properties to be surveyed and valued, and the proposed exchange to be reported on or approved by a surveyor appointed by themselves.

We declare that the foregoing statement is in all respects true according to our information and belief.

Dated this day of 18 .

By sect. 22 of the Elementary Education Act, 1870 (*n*), it is enacted that "the provisions of the Charitable Trusts Acts, 1853 to 1869, which relate to the sale, leasing, and exchange of lands belonging to any charity, shall extend to the sale, leasing, and exchange of the whole or any part of any land or school-house belonging to a school board, which may not be required by such board, with this modification, that the Education

(*n*) 33 & 34 Vict. c. 75.

Department shall, for the purposes of this section, be deemed to be substituted in those acts for the charity commissioners."

16 & 17 Vict. c. 137, s. 24.

By sect. 6 of the act 17 & 18 Vict. c. 112 (An Act to afford greater facilities for the establishment of institutions for the promotion of literature and science and the fine arts, and to provide for their better regulation), no property held upon trust for charitable purposes is to be granted for the purpose of that act, without the consent of the charity commissioners.

Literary and Scientific Institutions Act, 1854.

25. The said board shall have authority, upon such application as aforesaid, to authorize the sale to the owners of the land charged therewith of any rentcharge, annuity, or other periodical payment charged upon land and payable to or for the benefit of any charity or applicable to charitable purposes, upon such terms and conditions as they may deem beneficial to the charity, and to give such directions for securing the due investment of the money arising from such sale for the benefit of the charity, or for securing the due application thereof to such charitable purposes, as they may think fit; and in like manner the trustees of any charity, with the consent of the board, may purchase any rentcharge or other yearly payment to which the charity estate is or shall be liable.

Board may authorize the redemption of rent-charges.

26. The leases, sales, exchanges, and other transactions authorized by such board under the powers of this act shall have the like effect and validity as if they had been authorized or directed by the express terms of the trust affecting the charity.

Leases, sales, &c. authorized by the board to be valid.

27. Where any land shall be required for the erection or construction of any house or building with or without garden, playground, or other appurtenances, for the purposes of any charity, [and the trustees of the charity shall be legally authorized to purchase and hold such land] (*o*), but by reason of the disability of any person having an

Trustees of charities enabled to purchase sites for building from owners under disability, &c. according to

(*o*) Sect. 41 of the Charitable Trusts Amendment Act, 1855, repeals these words and extends the section to "incorporated trustees."

16 & 17 Vict. c. 137, s. 27.

the provisions of Lands Clauses Consolidation Act, 1845.

estate or interest in such land, or of any defect in title thereto, a valid and perfect assurance of the same land cannot be made to the trustees of the charity in the ordinary manner, it shall be lawful for the trustees of the charity, with the sanction of the said board (such sanction to be certified under the hand of their secretary), to take and purchase such land according to the provisions of "The Lands Clauses Consolidation Act, 1845;" and for that purpose all the clauses and provisions of the last-mentioned act with respect to the purchase of lands by agreement, and with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making a title, and also with respect to conveyances of lands, so far as the same clauses and provisions respectively are applicable to the cases contemplated by this provision, shall be incorporated in this act; and in all cases contemplated by this provision, the expression "the special act," used in the said clauses and provisions of the said "Lands Clauses Consolidation Act," shall be construed to mean this act; and the expression "the promoters of the undertaking," used in the same clauses and provisions, shall be construed to mean the trustees of the charity in question.

The clauses and provisions of the Lands Clauses Consolidation Act, 1845, which are by this section incorporated in this act, are the following:—

1. Sections 6-15, "with respect to the purchase of lands by agreement."

Power to purchase lands by agreement.

§ 6. Subject to the provisions of this and the special act, it shall be lawful for the promoters of the undertaking (*p*) to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interest in such lands, or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

(*p*) See above, Charitable Trusts Act, 1853, s. 27.

16 & 17 Vict. c. 137, s. 27.

Parties under disability enabled to sell and convey.

§ 7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary arrangements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed or entitled as aforesaid so to sell, convey or release (that is to say), all corporations, tenants in tail, or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years; or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special act, if they had respectively been under no disability, and as to such trustees, executors and administrators, on behalf of their cestuis que trusts, whether infants, issue unborn, lunatics, femes covert, or other persons, and that to the same extent as such cestuis que trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability.

Parties under disability to exercise other powers.

§ 8. The power hereinafter given (*q*) to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of parties under disability to be ascertained

§ 9. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except

(*q*) See §§ 95—97.

16 & 17 Vict. c. 137, s. 27.

where the same shall have been determined by the verdict of a jury or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained (*r*), be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree, or if not, then the surveyor nominated by the said justices shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned (*s*).

by valuation, and paid into the bank.

Where vendor absolutely entitled, lands may be sold on chief rents.

§ 10. It shall be lawful for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased for the purposes of the special act to sell and convey such lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

Payment of rents to be charged on tolls.

§ 11. The yearly rents reserved by any such conveyance shall be [charged on the tolls or rates, if any, payable under the special act, and shall be otherwise] secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking.

Power to purchase lands required for additional accommodation.

§ 12. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Authority to sell and repurchase such lands.

§ 13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promotors of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; [but the total quantity of land to

(*r*) See § 58. (*s*) See § 85.

be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity] (*t*).

16 & 17 Vict. c. 137, s. 27.

Restraint on purchase from incapacitated persons.

[§ 14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.]

Municipal Corporations not to sell without the approbation of the Treasury.

§ 15. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of the Commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special act [other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily] (*u*).

Sections 69—80. "With respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

Purchase-money payable to parties under disability amounting to 200*l.* to be deposited in the bank.

§ 69. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the Accountant-General of the Court of Chancery in England if the same relate to lands in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such Accountant-General, ex parte the promoters of the undertaking (describing them by their proper name), in the matter of the special act (citing it), pursuant to the method prescribed by any act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say):

In the purchase or redemption of the land tax, or the discharge of any

(*t*) The last clause of § 13, and § 14, forbidding the purchase of more land than the quantity prescribed by the special act, do not apply to the provisions of the Charitable Trusts Act, 1853, no quantity being there prescribed.

(*u*) This does not seem to apply to the Charitable Trusts Act, 1853.

16 & 17 Vict. c. 137, s. 27.

debt or incumbrance affecting the land in respect of which such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts or purposes; or

In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or

[If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct] (*o*); or

In payment to any party becoming absolutely entitled to such money (*p*).

(*o*) This can hardly apply to the Charitable Trusts Act, 1853.

(*p*) It has been held that the purchase-money of charity lands in court under this section may be invested under the provisions of s. 32 of the Settled Land Act, 1882. *In re Byron's Charity*, L. R. 23 Ch. D. 171; 31 W. R. 517; 48 L. T. N. S. 515. The affidavit of no title, required by Consol. Ord. XXXIV. r. 3, and now by R. S. C. O. LII. r. 18, in such a case, cannot be dispensed with. *Ex parte Wardens, &c. of Winchester College*, 14 W. R. 788. [See, however, *In re President, &c. of Magdalen College, Oxford*, 42 L. T. N. S. 822; W. N. (1880) 150, where, the petition being by a large public body, the affidavit was dispensed with.] The affidavit may be made by the clerk of the trustees, or by one out of several petitioners. *Re Edward Sixth's Almshouses*, 16 W. R. 841; *In re Vale of Neath Railway Act*, W. N. (66), 78.

The trustees of a charity, where lands of the charity have been taken under this act and the purchase-money is in court, are persons "absolutely entitled" under this section, and the fund will on their petition be ordered to be paid out to them. *Ex parte Trustees of Tid St. Giles*, 17 W. R. 758; *In re Spurstowe's Charity*, L. R. 18 Eq. 279; 22 W. R. 566; 30 L. T. N. S. 355; 43 L. J. N. S. Ch. 512; cf. *Ex parte Haberdashers' Company*, Sol. J. XXXI. 126.*

The "official trustees of charitable funds" may also, it would seem, be "absolutely entitled" under this section, and therefore, where charity land had been taken by a corporation under this act, and the purchase-money being in court, the Charity Commissioners authorized the trustees to purchase other lands, and to apply to the High Court for a transfer of the funds to the "official trustees," in order that they might be applied in part payment of the purchase-money of such other lands, and a petition was presented by the trustees of the charity for such transfer, it was held that the costs of the application and transfer, but no more, were payable by the corporation. *Ex parte the Trustees of Bishop Monk's Horfield Trust*, 29 W. R. 462; 43 L. T. N. S. 793;

* Where the trustees have no power of sale, the consent of the Charity Commissioners to the payment out must be obtained. *Re Faversham Charities*, 5 L. T. N. S. 787; *Ex parte Norfolk Clergy Governors*, W. N. (82) 53; but see *In re Parson, &c. of St. Alphage*, W. N. (86), 154.

16 & 17 Vict. c. 137, s. 27.

§ 70. Such money may be so applied as aforesaid upon an order of the Court of Chancery in England, or the Court of Exchequer in Ireland, made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of Three per Centum Consolidated or Three per Centum Reduced Bank Annuities, or in government or real securities, and the interest, dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands (*q*).

Order for application and investment meanwhile.

§ 71. If such purchase-money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the parties so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof, and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

§ 72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

Sums not exceeding 20*l.* to be paid to parties.

§ 73. All sums of money exceeding twenty pounds which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

cf. the earlier case of *In re Bristol Free Grammar School*, W. N. (1878) 26; and see the proviso to s. 80 of the act.

(*q*) See the cases on payment out to trustees, &c. of charities collected under § 17 of the Charitable Trusts Act, 1853, *ante*, p. 100.

16 & 17 Vict. c. 137, s. 27.

with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: provided always, that it shall be in the discretion of the Court of Chancery in England, or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

§ 74. Where any purchase-money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

§ 75. Upon deposit in the bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have

16 & 17 Vict. c. 137, s. 27.

been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase-money to be deposited.

§ 76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for (*r*), it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the Accountant-General of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

§ 77. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or, if they be not a corporation, under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use, and in respect whereof such purchase-money or compensation shall have been deposited, shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

(*r*) See § 54.

16 & 17 Vict. c. 137, s. 27.

Application of moneys so deposited.

§ 78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession to be deemed the owner.

§ 79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

§ 80. In all cases of moneys deposited in the bank under the provisions of this or the special act, or any act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking: (that is to say) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for (*s*), and the costs of the investment of such moneys in government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividend and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said

(*s*) See §§ 34, 51—53, 67, 83.

moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking. 16 & 17 Vict. c. 137, s. 27.

Sections 81—83. "With respect to the conveyances of lands."

§ 81. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the schedules (A) and (B) (*s*) respectively to this act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules, or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance. Form of conveyances.

§ 82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title. Costs of conveyances.

§ 83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery, or by a Master in Chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner (*t*) hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of Taxation of costs of conveyances.

(*s*) See *post*, p. 130. (*t*) See § 53.

16 & 17 Vict. c. 137, s. 27.

the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

SCHEDULE (A).

Form of Conveyance.

I of in consideration of the sum of paid to me [*or, as the case may be,* into the Bank of England [*or* Bank of Ireland], in the name and with the privity of the Accountant-General of the Court of Chancery, ex parte "The Promoters of the Undertaking" [*naming them*], *or* to A. B. of and C. D. of two trustees appointed to receive the same], pursuant to the [*here name the special act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or* constituted] by the said act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights and appurtenances thereto belonging, and all such estate, right, title and interest in and to the same as I am or shall become seised or possessed of, or am by the said act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act. In witness whereof I have hereunto set my hand and seal, the day of in the year of our Lord .

SCHEDULE (B).

Form of Conveyance on Chief Rent.

I of in consideration of the rent-charge to be paid to me, my heirs and assigns as hereinafter mentioned, by "The Promoters of the Undertaking" [*naming them*], incorporated [*or* constituted] by virtue of the [*here name the special act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights and appurtenances thereunto belonging, and all my estate, right, title and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or* half-yearly, *as agreed upon*] portions henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of in the year of our Lord .

16 & 17 Vict. c. 137, s. 28.

In cases of charities the incomes of which exceed 30*l.*, Master of the Rolls and Vice-Chancellors upon applications to them at chambers, to have the same jurisdiction as the Court of Chancery or Lord Chancellor now has upon information, &c.

28. Where the appointment or removal of any trustee, or any other relief, order, or direction relating to any charity of which the gross annual income for the time being exceeds thirty pounds, shall be considered desirable, and such appointment, removal or other relief, order, or direction might now be made or given by the Court of Chancery, in respect either of its ordinary (*u*) or its special or statutory (*x*) jurisdiction, or by the Lord Chancellor intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorized in this behalf by the order or certificate of the said board, or for the Attorney-General, to make application (without any information, bill, or petition) to [the Master of the Rolls or one of the Vice-Chancellors] (*y*), sitting at chambers, for such order, direction, or relief as the nature of the case may require; and the [Master of the Rolls or the Vice-Chancellor] to whom any such application shall be made shall and may proceed upon and dispose of such application in chambers, save where he may think fit otherwise to direct, and shall and may have and exercise thereupon all such jurisdiction, power, and authority, and make such orders and give such directions in relation to the matter of such application, as might now be exercised, made, or given by the Court of Chancery or by the Lord

(*u*) On information by the Attorney-General or on bill and information, where the object is to decide a right; on bill by the trustees, where the object is not to decide a right, as merely to compel a party to account. See *Attorney-General* v. *Warren*, 2 Swan. 301.

(*x*) *I.e.* on petition under Sir Samuel Romilly's Act, 52 Geo. 3, c. 111; under the Trustee Acts, 1850 and 1852, 13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55; and under the Trustees Relief Acts, 1847 and 1849, 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74.

(*y*) For these words are substituted by the operation of the Supreme Court of Judicature Act, 1873, s. 34, the words "a judge of the Chancery Division of the High Court of Justice."

16 & 17 Vict. c. 137, s. 28.

Chancellor intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require;* and the [Master of the Rolls and Vice-Chancellors] (*z*) respectively shall, in relation to such applications as aforesaid, and the proceedings thereon, (subject to any rules which may be made by the Lord Chancellor, with the advice and consent of them or any two of them,) have all such powers of directing matters to be heard in open court, and of ordering what matters shall be heard and investigated by themselves and their chief clerks respectively, and such other powers and authorities as by the act of the last session of Parliament, chapter eighty (*a*), are vested in or authorized to be exercised by them at chambers; and the provisions of the said act applicable to orders made by the Master of the Rolls or any of the Vice-Chancellors at chambers shall extend to all orders so made under this act: Provided always, that, save as may be otherwise provided by any rules to be made by the Lord Chancellor, with such advice and consent as aforesaid, the determinations of the Master of the Rolls and Vice-Chancellors respectively upon and in relation to such applications as aforesaid shall not be subject to appeal in any case where the gross annual income of the charity does not exceed one hundred pounds:† Provided also, that it shall be lawful for the [Master of the Rolls or any Vice-Chancellor] (*b*), where under the circumstances of any application as aforesaid he may so see fit, to direct that for obtaining the relief, order, or direction sought for by such application an information, bill, or petition,‡ as the case may require, shall be filed or

15 & 16 Vict. c. 80.

(*z*) Substitute the word "judges."

(*a*) This was the Master in Chancery Abolition Act, 1852, most of which is now repealed by the Statute Law Revision Acts, 1875, 1881, and 1883, and is superseded by Order LV. of the Rules of the Supreme Court, 1883.

(*b*) Substitute the word "judge."

presented and prosecuted as now by law required, and to abstain from further proceeding on such application (*c*). 16 & 17 Vict. c. 137, s. 28.

* The jurisdiction conferred by this section on the Master of the Rolls and the Vice-Chancellors sitting at chambers, is such as before the passing of the act they could have exercised in a suit regularly instituted or on petition, and, therefore, when the surviving trustee of the funds of a charity was lunatic, the Vice-Chancellor at chambers had power to make a vesting order under the Trustee Acts without a petition (*d*).

† The determinations of the Master of the Rolls and Vice-Chancellors respectively under this section are not to be subject to appeal where the gross annual income of the charity does not exceed £100. Where several charities were the subject of the same application under this section, it was held sufficient if the income of all exceeded £100 (*e*).

The jurisdiction in appointing new trustees conferred by this section on the Master of the Rolls and Vice-Chancellors was conferred by the Charitable Trusts Act, 1860 (*f*), on the Charity Commissioners. Upon appeal from their decision the Court of Chancery will refuse to interfere with the exercise of their discretion by the Commissioners, except in a very strong case of miscarriage of justice. For example, where, in consequence of differences between the existing trustees of charity schools, the schools were closed, and the Commissioners appointed new trustees to act with the existing trustees, and the trustees, thus increased, decided to transfer the schools to the school board, the court (Jessel, M. R.) refused to interfere with the appointment of the new trustees (*g*).

‡ A petition under this section for the appointment of new trustees of a charity is sufficiently entitled, if entitled "In re the Charitable Trusts Act, 1853," and "In re the Trustee Act, 1850," and need not be presented under Sir Samuel Romilly's Act (*h*).

(*c*) On this section and sects. 32 and 43, see sects. 2 and 4 of the Charitable Trusts Act, 1860, *post*, pp. 206 and 210. See also the limitation on this jurisdiction contained in sect. 40 of the City Parochial Charities Act, 1883, *post*.

(*d*) *Re Davenport's Charity*, 4 De G. M. & G. 839. See, however, *Re Lincoln Primitive Methodist Chapel*, 3 W. R. 608; 1 Jur. N. S. 1011, where it was held that a petition was necessary.

(*e*) *Merchant Taylors' Company* v. *Attorney-General*, L. R. 6 Ch. 512; 19 W. R. 641; 40 L. J. N. S. Ch. 545; 25 L. T. N. S. 109; *Re Charitable Gifts for Prisoners, Ex parte The Governors of Christ's Hospital*, 28 L. T. N. S. 84; L. R. 8 Ch. 199; 42 L. J. N. S. Ch. 391; 21 W. R. 213.

(*f*) 23 & 24 Vict. c. 136, s. 2, *post*, p. 206.

(*g*) *Re Burnham National Schools, Ex parte Bates*, 29 L. T. N. S. 495; L. R. 17 Eq. 241; 43 L. J. N. S. Ch. 340; 22 W. R. 198.

(*h*) 52 Geo. 3, c. 101; *In re Lincoln Primitive Methodist Chapel*, 1 Jur. N. S. 1011; 3 W. R. 608.

16 & 17 Vict. c. 137, s. 28.

Application to the judge at chambers under this section, as amended by the Supreme Court of Judicature Act, 1873 (*i*), is by summons (*k*), and no order made under the principal act by the judge in chambers is to be subject to appeal, where the gross annual income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed £100, unless the judge by whom such order may have been made shall certify that such appeal ought to be permitted, either absolutely or on such terms as the judge may think fit to impose (*l*).

The summons, though it is not so specified in the Rules of the Supreme Court, must be an originating one (*m*).

It should be intituled in the matter of the charity, as described in the certificate authorizing the application, and also in the matter of the Charitable Trusts Acts and of any other special acts, such as the Trustee Acts, conferring jurisdiction in the particular case (*n*).

For forms of orders in chambers under this section see Seton on Decrees (*o*).

The fees payable on proceedings under this section are to be the same as the fees payable according to the rules relating to costs in respect of other proceedings commencing by summons, and are to be regulated in all other respects by the rules relating to summonses (*p*).

Provision as to charities within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster.

29. The jurisdiction created and given by this act to the Master of the Rolls and the Vice-Chancellors sitting in chambers, upon any application to them respectively as aforesaid, shall extend concurrently to and may be exercised by the Chancellor of the Duchy and County Palatine of Lancaster, and the Vice-Chancellor of the same County Palatine respectively for the time being, as to every charity within the jurisdiction of the Court of Chancery of the said County Palatine whose gross annual income for the time being exceeds thirty pounds, upon application being made to such Chancellor or Vice-Chancellor respectively; and it shall be lawful for the Chancellor of the said Duchy and County Palatine, with the concurrence of the Vice-Chancellor of the same County Palatine, from time to time

(*i*) 36 & 37 Vict. c. 66.
(*k*) R. S. C. Ord. LV. r. 13.
(*l*) *Ibid.* r. 14.
(*m*) Daniell's Chancery Forms, p. 880.
(*n*) Daniell's Chancery Practice, p. 2049.
(*o*) Vol. I. p. 568.
(*p*) R. S. C. Ord. LXIV. r. 24; see also App. N.

to make and issue any rules and orders for regulating the modes of proceeding, and the fees to be taken in respect of proceedings under this act. 16 & 17 Vict. c. 137, s. 29.

30. Provided always, that the provisions of this act applicable to any charity, the gross annual income whereof exceeds thirty pounds, shall extend to any charity established or administered, or applicable to or for objects or purposes within the City of London, the gross annual income whereof does not exceed thirty pounds, in like manner as if such income exceeded that amount. Provisions as to charities exceeding 30*l.* per annum to extend to charities in London not exceeding 30*l.*

With regard to parochial charities in the City of London, see the Report (*q*) of the Royal City Parochial Charities Commission, appointed in the year 1878, upon the recommendation mainly of the Charity Commissioners, who had, as stated in their 24th and 25th Reports (*r*), found great difficulty in dealing with this class of charities; see also the City Parochial Charities Act, 1883 (*s*), which was the result of the recommendations of this Commission, and which gave new and special powers to the Charity Commissioners in respect of such charities.

31. It shall be lawful for the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice-Chancellors, or any two of them, to make and issue general rules and orders for regulating the mode and form of applications at the chambers of the Master of the Rolls and Vice-Chancellors respectively under this act, and the proceedings thereon, and for determining in what cases and under what conditions and restrictions the determinations of the Master of the Rolls and Vice-Chancellors respectively upon or in relation to such applications shall be subject to appeal, and the fees and allowances to solicitors of the Court of Chancery, and the fees to be pay- Lord Chancellor, with the advice of Master of the Rolls and Vice-Chancellors, or two of them, to make General Orders.

(*q*) Parliamentary Papers, 1880, Vol. 20.

(*r*) Parliamentary Papers, 1877, Vol. 26, and 1878, Vol. 24.

(*s*) *Post.*

16 & 17 Vict. c. 137, s. 31.

able in money or by stamps to the officers of the said court in respect of such applications and proceedings thereon; and such rules and orders may from time to time be varied by the like authority, and all such rules and orders shall be deemed general orders of the said court.

District Courts of Bankruptcy and County Courts to have jurisdiction in cases of charities the incomes of which do not exceed 30*l*.

32. Where any charity of which the gross annual income for the time being does not exceed thirty pounds shall be established or administered or be applicable wholly or partially to or for objects or purposes within the district or any two or more of the districts of any [district Court of Bankruptcy or of any] county court or courts holden under the act of the session holden in the ninth and tenth years of the reign of her Majesty, chapter ninety-five (*t*), and the appointment or removal of any trustee, or any other relief, order, or direction whatsoever concerning such charity, shall be considered desirable, and such appointment or removal, or other relief, order, or direction, might now be made or given by the Court of Chancery in respect either of its ordinary or its special or statutory jurisdiction, or by the Lord Chancellor intrusted with the care and commitment of the custody of lunatics, it shall be lawful for any person authorized in this behalf by the order or certificate of the said board, or for the Attorney-General, to make application to such [district or] county court, or, as the case may be, to any one of such [district or] county courts, for such order, direction, or relief as the nature of the case may require; and such [district or] county court shall entertain such application, and shall hear the matter in open court, and shall give such relief,

(*t*) Amended by 19 & 20 Vict. c. 108; and also by 12 & 13 Vict. c. 101; 13 & 14 Vict. c. 61; 15 & 16 Vict. c. 54; 21 & 22 Vict. c. 74; 28 & 29 Vict. c. 97; 29 & 30 Vict. c. 14; 30 & 31 Vict. c. 142; 38 & 39 Vict. c. 50.

and make such orders and directions in relation to the matter of such application, as might now be made or given by the Court of Chancery or by the Lord Chancellor, intrusted as aforesaid, in a suit regularly instituted, or upon petition, as the case may require; and the clerk of such county court shall transmit a copy of such order or direction to the office in London of the registrar of county courts judgments, to be there enrolled: Provided always, that no judge of any [district or] county court shall be authorized to vary any decree, order, or direction of the Court of Chancery, or of any judge thereof, or to make or give any order or direction inconsistent or conflicting with any such decree, order, or direction: Provided also, that where two or more [district or] county courts shall have concurrent jurisdiction with respect to any charity under this act, no application in respect of such charity shall be made to or entertained by more than one of such [district or] county courts at the same time (*u*). 16 & 17 Vict. c. 137, s. 32.

33 (*x*). [The jurisdiction hereby created and conferred on the county courts with respect to any charity shall not be exercised by any deputy or other person who may for the time being be appointed to sit and shall be sitting for any such judge.] Deputy sitting for county court judge not to exercise jurisdiction.

34. Where two or more [district courts of bankruptcy or] county courts shall concurrently have jurisdiction under this act with respect to any charity, it shall be lawful for the said board to order to which of such courts any application with respect to such charity shall be made; Where two or more courts have concurrent jurisdiction, board to direct to which court applications shall be made.

(*u*) See ss. 2, 4, and 11 of the Charitable Trusts Act, 1860, *post*, pp. 206, 210, and 215; and s. 40 of the City Parochial Charities Act, 1883, *post*.

(*x*) Repealed by the Statute Law Revision Act, 1875.

16 & 17 Vict. c. 137, s. 34.

and every such order shall be conclusive as to the jurisdiction with respect to the application referred to in such order.

Board may direct cases within the jurisdiction of a district or county court to be taken before a judge of the Court of Chancery in the first instance.

35. It shall be lawful for the said board to direct that any application as to any charity within the jurisdiction of any [district court of bankruptcy or] county court shall be made before a judge of the Court of Chancery, or as to any charity within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster, either before the Chancellor or the Vice-Chancellor of the same County Palatine, or before a judge of the High Court of Chancery, according to the provisions herein contained applicable to a charity the gross annual income whereof exceeds thirty pounds, and in such case such application shall be made and may be heard and determined accordingly, in like manner as if the gross annual income of such charity exceeded thirty pounds; and upon the production of the order or certificate containing such direction, or of a copy thereof, the application with respect to which such order or certificate shall have been made shall not be entertained or proceeded with by such [district or] county court.

No order of district or county court for the appointment or removal of trustees or approval of a scheme to be valid unless confirmed by board.

36. Whenever any order or decision is made by any [district court of bankruptcy or] county court for the appointment or removal of any trustee of any charity, or approving of any scheme for regulating or directing the administration of any charity, or the estate, funds, property, or income thereof, a copy of every such order or decision shall immediately upon the making thereof be delivered or transmitted by the [deputy registrar of such district court or by the] clerk of the county court [as the case may be], together with all requisite particulars, to the said board, for the purpose of being considered by them;

and no such order or decision shall be valid or effectual until the same shall have been approved by the said board, such approval to be testified by a certificate in writing, signed by the secretary of the said board, and no such approval shall issue from the said board until one calendar month shall have elapsed after the receipt by the board of such copy and particulars. 16 & 17 Vict. c. 137, s. 36.

37. In case any such order or decision as last aforesaid of any [district court of bankruptcy or] county court shall not be approved by the said board, it shall be lawful for such board to remit the same for reconsideration and decision by such [district or] county court, with such remarks and recommendations thereon (if any) as shall seem fit and expedient to such board, or, in the discretion of the board, to order and direct that the subject-matter to which such order or decision relates, together with such order or decision, shall be submitted to the consideration and decision of a judge of the Court of Chancery, and in such last-mentioned case no further proceedings shall be had or taken in the [district or] county court with respect to the matter in question; and in case the order or decision of the [district or] county court, on the reconsideration of any order or decision so remitted for reconsideration, be disapproved as aforesaid by the said board, such board shall refer such orders and decisions, and the subject-matter thereof, to a judge of the Court of Chancery, or, as to any charity within the jurisdiction of the Court of Chancery of the County Palatine of Lancaster, either to the Chancellor or the Vice-Chancellor of the same County Palatine, or to a judge of the High Court of Chancery; and where any order or decision is referred to a judge of the Court of Chancery, or of the Court of Chancery of the said County Palatine of Lancaster, under this provision, such judge

Board, if dissatisfied with the order of district or county court, may remit the case for reconsideration, or may transfer the matter to a judge of the Court of Chancery.

16 & 17 Vict. c. 137, s. 37.

shall have and exercise all such jurisdiction, power, and authority in relation thereto as in the case of a charity the gross annual income whereof exceeds thirty pounds, and may make such order in relation to the matter of such order or decision as to him may seem proper.

How orders of district or county court under this act to be enforced.

38. Subject to any orders to be made by the Lord Chancellor as hereinafter mentioned, and to the other provisions of this act, all proceedings to be taken in any [district court of bankruptcy or] county court, and all orders and directions to be made or given by any such [district court or] county court by virtue of the jurisdiction hereby created and conferred on such court, shall respectively be subject to the same rules and regulations, and have the same effect and be registered, enforced, and executed in the same manner, as the other proceedings, orders, judgments, and directions of the same court under its ordinary jurisdiction, and it shall be lawful for any such [district court, or for any] county court, with the consent of the board, to rescind or vary any order which shall have been previously made by such court, without prejudice to any act or matter in the meantime done under such order; and for executing and putting in force any order to be made by any county court under this act, every judge of any such court shall and may have and exercise all such powers as by the act of the session holden in the ninth and tenth years of her Majesty, chapter ninety-five, are given for enforcing the payment of any debt, damages, or costs under the said act (*y*).

Appeal.

39. Where any person authorized to make any application under this act, (other than her Majesty's Attorney-

(*y*) See ss. 93—113; but see also the amending statutes, enumerated *ante*, p. 136.

General acting *ex officio*,) or any other person who may have been made a party to any proceeding upon any application under this act, is aggrieved* by or dissatisfied with any order made by any [district court of bankruptcy or] county court upon any such application, or any proceeding thereon, he may, within one calendar month after the making of such order, give notice in writing to the said court, and also to the said board, that he is desirous to appeal against the same; and if the said board think it reasonable and proper that such appeal should be entertained, and give a certificate to that effect, such [district or] county court shall suspend any proceedings upon the order appealed against during such time as the circumstances may require; and the said board, if they so think fit, may require the person giving any such notice of appeal to become bound, with two sufficient sureties, to be approved by the [deputy registrar of such district court, or by the] clerk of the county court [as the case may be], to the treasurers of the said courts respectively, or such other person as the said board may see fit, in such sum as to the said board shall seem reasonable, to pay such costs of the proceedings on the appeal as shall be ordered to be paid by such appellant, and also (if the said board so think fit) to indemnify the charity against the costs and expenses of or attending such appeal; and every bond executed under this provision shall be exempt from stamp duty: Provided always, that it shall be lawful for her Majesty's Attorney-General (acting *ex officio*), at any time within three calendar months after the making of any order by a [district court or] county court under this act, to lodge and commence and prosecute an appeal against such order, without giving any such notice or becoming bound as aforesaid, and every such last-mentioned appeal shall thereupon be allowed by the order of such [district

16 & 17 Vict. c. 137, s. 39.

16 & 17 Vict. c. 137, s. 39.

or] county court, and shall have such other effect as any other appeal under this act.

* It has been questioned who is a party "aggrieved" within the meaning of this section. Where the rector of a parish appealed by petition from the order of the county court judge appointing certain persons, who might be Dissenters, trustees with him of a charity which was applicable in maintaining the fabric of the church, it was held that the appeal had been rightly allowed (*z*). Moreover, Vice-Chancellor Stuart seemed to think that the Commissioners, having sanctioned the petition, the appeal must succeed, and that it was his duty to appoint as trustees the persons asked for by the petitioners (*a*).

Proceedings on appeal.

40. Where any order allowing an appeal has been made as aforesaid, the person thereby allowed to appeal shall within three calendar months present a petition to the [Court of Chancery] (*b*), setting forth the order appealed against, and the order allowing such appeal and praying such relief as the case may require; and upon the hearing of such petition the court may confirm, vary, or reverse the order appealed against, or may remit such order to the district court of bankruptcy or county court by which the same was made, with or without any declaration or directions of the [Court of Chancery] (*b*) in relation thereto, or may proceed in relation to the charity to which such order relates as in the case of an application under this act to a judge of the Court of Chancery at chambers, and

(*z*) *Re Donington Church Estate, Re The Charitable Trusts Act*, 1853, 8 W. R. 301; 6 Jur. N. S. 290; 2 L. T. N. S. 10.

(*a*) *Ibid.*

(*b*) To what court is this appellate jurisdiction now transferred? See Daniell's Chancery Practice, p. 2053, where it is said to be transferred to the Chancery Division of the High Court of Justice; but from s. 45 of the Supreme Court of Judicature Act, 1873, in conjunction with s. 34, sub-s. (2), of the same act, and R. S. C. Ord. LIX. r. 4, it would appear that the jurisdiction is now vested in "such divisional court of the Queen's Bench Division as the Lord Chief Justice of England shall from time to time direct." Appeals, however, being generally from decisions of the Board, under s. 8 of the Charitable Trusts Act, 1860, the question of appeals from county courts on charity matters is of comparatively little importance.

any judge of such court sitting at chambers or in open court may make or give any such orders or directions in relation to the matter of such order as he may see fit, or the court may make such other order in relation to the matter of any such appeal as to the court may seem just, and as might be made in the case of a suit regularly instituted, or a petition, as the case may require; and in case the party allowed to appeal do not within such three calendar months present such petition of appeal, the order against which such appeal was allowed shall be final; and in case any costs adjudged on any such appeal to be paid by the party allowed to appeal be not paid, such bond as aforesaid may be put in suit, and the money to be recovered on every such bond shall be applied to indemnify the charity estate or the person damnified, or otherwise in such manner as the justice of the case may require, and the court or judge by whom such appeal may have been heard shall think fit.

16 & 17 Vict. c. 137, s. 40.

Bond to prosecute appeal may be put in suit.

41. Provided always, that no judge of the Court of Chancery nor any [district court of bankruptcy or] county court, shall upon any proceedings under this act have jurisdiction to try or determine the title at law or in equity to any real or personal property, or any term or interest therein, as between any charity, or the trustee thereof, and any person holding or claiming such real or personal property, term, or interest adversely to such charity, or to try or determine any question as to the existence or extent of any charge or trust (*c*).

No chancery judge, or district or county court, in proceedings under this act to try titles, &c.

42. Before any application shall be made to any judge of the Court of Chancery, or to any [district court of bank-

Notice to be published of application

(*c*) See notes to sect. 17.

16 & 17 Vict. c. 137, s. 42.

ruptcy or] county court, under any of the provisions herein contained for the establishment or alteration of a scheme or the appointment or removal of any trustees or trustee, notice in writing of such intended application shall be given in such form and manner as the said board shall have directed; and if the order be that such notice be affixed to or near the door of any parish or district church, the incumbent and churchwardens of such parish or district are hereby respectively required to allow such notice to be affixed and to remain so affixed during such period, not less than fifteen days, as the said board shall have ordered; and in any case in which the order shall be that such notice shall be affixed to any place, evidence that the same has been so affixed shall be deemed and taken as *primâ facie* evidence that it has remained affixed during the period prescribed by the board.

for schemes or appointment or removal of trustees under this act.

By whom applications may be made.

43. Every application to any judge or court under the jurisdiction created or conferred by any of the provisions of this act, may be made by her Majesty's Attorney-General, or, subject to the provisions aforesaid, by all or any one or more of the trustees or persons administering or claiming to administer, or interested in,* the charity which shall be the subject of such application, or any two or more inhabitants of any parish or place within which the charity is administered or applicable;† and it shall be lawful for her Majesty's Attorney-General for the time being, acting *ex officio*, to make application by petition to the Court of Chancery with respect to any charity under the provisions of the act passed in the fifty-second year of King George the Third, chapter one hundred and one, or under the provisions of any act or acts passed or to be passed authorizing the application to the same court by petition according to the provisions of the said act.‡

Attorney-General may petition under 52 Geo. 3, c. 101.

16 & 17 Vict. c. 137, s. 43.

* By sect. 78 of the Elementary Education Act, 1870 (*d*), it is enacted that "The Education Department shall, for the purposes of the Charitable Trusts Acts, 1853 to 1869, be deemed to be persons interested in any elementary school to which these acts are applicable, and the endowment thereof."

† It appears that this enumeration of persons by whom application may be made is intended to limit the discretion of the board in authorizing persons by their order or certificate to make such application. See sect. 28 of this act and in sect. 2 of the Charitable Trusts Act, 1860, the words "might be authorized."

‡ The act referred to is known as Sir Samuel Romilly's Act, and is as follows:—

Whereas it is expedient to provide a more summary remedy in cases of breach of trusts created for charitable purposes, as well as for the just and upright administration of the same; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual, temporal, and commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this act, in every case of a breach of any trust or supposed breach of any trust created for charitable purposes, or whenever the direction or order of a court of equity shall be deemed necessary for the administration of any trust for charitable purposes, it shall be lawful for any two or more persons to present a petition to the [Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the Great Seal, or Master of the Rolls for the time being, or to the Court of Exchequer] (*e*), stating such complaint, and praying such relief as the nature of the case may require; and it shall be lawful for the [Lord Chancellor, Lord Keeper, and Commissioners for the custody of the Great Seal, and for the Master of the Rolls and the Court of Exchequer], and they are hereby required to hear such petition in a summary way, and upon affidavits or such other evidence as shall be produced upon such hearing to determine the same, and to make such order therein, and with respect to the costs of such application, as to him or them shall seem just; [and such order shall be final and conclusive, unless the party or parties who shall think himself or themselves aggrieved thereby shall, within two years from the time when such order shall have been passed and entered by the proper officer, have preferred an appeal from such decision to the House of Lords, to whom it is hereby enacted and declared that an appeal shall lie from such order] (*f*).

2. Provided always, and be it further enacted, that every petition so to

(*d*) 33 & 34 Vict. c. 75.

(*e*) By the Supreme Court of Judicature Act, 1873, s. 34, this jurisdiction would seem to be transferred to the Chancery Division of the High Court.

(*f*) This was repealed by the Statute Law Revision Act, 1881.

16 & 17 Vict. c. 137, s. 43.

be preferred as aforesaid shall be signed by the persons preferring the same, in the presence of and shall be attested by the solicitor or attorney concerned for such petitioners, and every such petition shall be submitted to and be allowed by his Majesty's Attorney or Solicitor-General, and such allowance shall be certified by him before any such petition shall be presented.

3. And be it further enacted, that neither the petitions, nor any proceedings upon the same or relative thereto, nor the copies of any such petitions or proceedings, shall be subject or liable to the payment of any stamp duty whatever.

Statement in certificate of board of the amount of income of any charity to be sufficient evidence for determining the jurisdiction or proceedings under this act.

44. For the purposes of determining the jurisdiction under this act with respect to any charity, or the right to appeal from the determination of a judge of the Court of Chancery, it shall be lawful for the said board to declare, according to such judgment as they may be able to form upon the returns or statements before them in relation to any charity, whether the gross annual income for the time being of such charity does or does not exceed thirty pounds or one hundred pounds (as the case may require), and a statement in any certificate or order of the said board that according to such judgment as aforesaid the gross yearly income of any charity does or does not exceed thirty pounds or one hundred pounds shall be sufficient evidence of the amount of the gross annual income of such charity, for the purpose of determining such jurisdiction or right to appeal as aforesaid; and any certificate or order made by the said board under this act, authorizing any proceeding or application concerning any charity to be taken or made to any [district court of bankruptcy or] county court or to the Court of Chancery or any judge thereof, shall state that the gross annual income for the time being of such charity does not exceed thirty pounds, or does exceed thirty pounds (as the case may be): Provided always, that where any charity, or the trustees thereof, in addition to the principal endowment for its general objects and purposes, shall be possessed of or entitled to any other endow-

Proviso as to particular endowments.

ment for any particular or special object or purpose arising out of or in its nature or application connected with the general objects or purposes of such charity, it shall be lawful for the said board, having regard to the circumstances of each such case, and to the object and extent of the proposed application and litigation, to determine whether such endowment for such particular or special object or purpose should, for the purposes of jurisdiction and proceedings under this act, be considered and treated as forming part of the general endowment of the charity, or as a separate or independent charity, and such board shall frame their certificate or order accordingly.

16 & 17 Vict. c. 137, s. 44.

45. The Lord Chancellor shall make such orders for regulating proceedings by and before the judges of [district courts of bankruptcy and] county courts under this act, and for fixing and determining the fees to be taken in respect of such proceedings, as he may see fit; and, subject to such orders, such judges may regulate the proceedings before them respectively so as to render them as summary and inexpensive as conveniently may be.

Lord Chancellor to make orders for regulating proceedings before district and county courts. Judges to regulate proceedings.

46. Nothing herein contained shall diminish or detract from any right or privilege which by any rule or practice of the Court of Chancery, or by the construction of law, now subsists for the preference or the exclusive or special benefit of the Church of England, or the members of the same church, in settling any scheme for the regulation of any charity, or in the appointment or removal of trustees, or generally in the application or management of any charity.

Reservation of rights and privileges of Church of England with respect to charities.

This section does not do away with the power which by the 28th and 32nd sections of this act, read together with sect. 2 of the Act of 1860, is

16 & 17 Vict. c. 137, s. 46.

conferred upon the Charity Commissioners of appointing and removing trustees in cases where the gross annual income exceeds £30; even though the effect of appointing certain trustees might be to hand over to the School Board a Church of England school (*g*). The section might, however, prevent the Court of Chancery from appointing as trustee of a church school one who was not a member of the Church of England (*h*).

Secretary to be treasurer of charities; such treasurer to be a corporation.

47. The secretary for the time being of the said board shall by virtue of his appointment be the treasurer of public charities; and such treasurer shall, for the purposes of taking, holding, conveying, assigning, transferring, and transmitting real property, including leaseholds for lives or years, be a corporation sole by the name of "The Treasurer of Public Charities" (*i*), and by that name shall have perpetual succession, and plead and be impleaded before all courts, justices, and others.

Land holden upon trust for a charity subject to jurisdiction of Court of Chancery and of judge may be vested in treasurer.

48. Where any land, or any term or estate therein, holden upon trust for any charity, shall be vested in any persons other than the persons acting in the administration and application of the rents; or where there shall be no trustees thereof, or the trustees, or any of them, shall be unwilling to act, or it shall be uncertain in whom such land, term or estate, shall be vested, or all or any of the persons in whom such land, term or estate, shall be vested cannot be found, or shall be under age, lunatic, or of unsound mind (whether found such by inquisition or not), or otherwise incapable of acting, or shall be out of the jurisdiction or not amenable to the process of the Court of Chancery, or where, by reason of the reduced number of trustees or other causes, a valid appointment of new trustees

(*g*) *Re Burnham National Schools, Ex parte Bates*, 29 L. T. N. S. 495; L. R. 17 Eq. 241; 43 L. J. N. S. Ch. 340; 22 W. R. 198.

(*h*) *Ibid.*

(*i*) For this name sect. 15 of the Charitable Trusts Amendment Act, 1855, substitutes "The Official Trustee of Charity Lands."

cannot be made, or where, by reason of the expenses incident to the appointment of new trustees, and the conveyance or assignment of such land, term or estate, to such new trustees, it shall appear to the Court of Chancery, or to any judge of such court or of any court having jurisdiction with respect to such charity under this act, desirable so to do, such court or judge may order that such land, term or estate, be vested in such treasurer (*j*), and thereupon the same shall vest in such treasurer (*j*) and his successors for all the estate and interest holden in trust for the charity as aforesaid, without any conveyance or assurance thereof; but no such vesting order as aforesaid shall be made in respect of any land, or term or estate as aforesaid, holden in trust as aforesaid, vested in a corporation, without the consent of the corporation; and no such vesting order shall take effect in respect of any copyhold land without the consent of the lord of the manor; and the Court of Chancery, or such judge, may direct such periodical or other payment, as such court or judge may think fit, to be made to the lord of the manor, in compensation for fines or other profits which would have become due upon death or admittance of tenants.

16 & 17 Vict. c. 137, s. 48.

Proviso.

By the proviso to this section no such vesting order, as is directed in the earlier part of the section, is to be made in respect of any land vested in a corporation, without the consent of the corporation. In a case where lands belonging to two charities were actually vested in the official trustee of charity lands under this section, in conjunction with sect. 15 of The Charitable Trusts Amendment Act, 1855 (*k*), it was held that the legal estate was vested in the churchwardens and overseers as a corporation, under 59 Geo. III. c. 12, s. 17 (*l*), and that, therefore, the case came within the proviso to this section (*m*).

(*j*) See n. (*i*), *supra*.

(*k*) 18 & 19 Vict. c. 124.

(*l*) This section, in effect, vested parish buildings, lands and hereditaments, in the churchwardens and overseers of the poor of the parish as a body corporate. See *Doe dem. Jackson* v. *Hiley*, 10 B. & C. 885.

(*m*) *Re Hackney Charities*, 11 L. T. N. S. 35; 12 W. R. 1129; 4 N. R. 530; 34 L. J. N. S. Ch. 169.

16 & 17 Vict. c. 137, s. 48.

By the Copyhold Acts Amendment Act (*n*) it was provided that "in the case of a corporation or other lord of any manor holden upon any charitable trust within the provisions of 'The Charitable Trusts Act, 1853,' or 'Charitable Trusts Amendment Act, 1855,' not authorized to make an absolute sale otherwise than under the provisions of the said last-mentioned acts or of the Copyhold Acts, the consideration money to be paid for the redemption or sale of any rent-charge, or as compensation for any enfranchisement, may, at the option of the lord, be paid into the hands of the official trustees of charitable funds acting under the said Charitable Trusts Acts, in trust for the charity to which the manor shall belong; and the principal monies shall be applied by the trustees, under the order of the Charity Commissioners for England and Wales, for the purposes to which the said money if paid into the Bank of England in the name of the Accountant-General of the Court of Chancery would be applicable under the Copyhold Acts, and in the meantime shall be invested, and the dividends of such investments shall be applied, according to the provisions of the said acts relating to charitable funds paid to such official trustees."

It has been held that an order vesting lands under this section may now be made by the High Court of Justice, the court to which the power specially conferred by this section on the Court of Chancery is with its other powers now transferred (*o*).

Orders may be made re-vesting land, &c. in the trustees of the charity.

49. It shall be lawful for any court or judge by whom respectively any such vesting order may have been made, or for any other court or judge having jurisdiction in the matter, if it shall so seem fit to such court or judge, from time to time to order that all or any part of the land, term or estate, which shall for the time being be vested in the said treasurer (*p*) by virtue of any such vesting order as aforesaid, shall be devested, and that the same shall be vested in the acting trustees or trustee for the time being of the charity; and such last-mentioned order shall operate to vest such land, term and estate, in the trustees or trustee therein named without any conveyance or assurance.

Treasurer to be a bare trustee.

50. Subject to the orders and directions of the Court of Chancery or of any such judge, such treasurer (*p*) shall be

(*n*) 21 & 22 Vict. c. 94, s. 15.

(*o*) *Attorney-General* v. *Langham*, Law Times, February 5th, 1887, p. 246.

(*p*) See n. (*i*), *supra*.

deemed a bare trustee, and shall permit the persons acting in the administration of the charity to have the possession, management, and control of the trust estates, and the application of the income thereof, as if the same had been vested in them.

16 & 17 Vict. c. 137, s. 50.

It is to be observed that this section, which enacts that the official trustee shall be a bare trustee, contains the following words, "subject to the order and direction of the Court of Chancery." The powers of the Court of Chancery being by sect. 2 of the Charitable Trusts Act, 1860, conferred on the Charity Commissioners, it has been argued that the board might make any order preventing trustees from having the complete management of charity property which is vested in the official trustee of charity lands (*q*) or the official trustees of charitable funds.

51. The secretary for the time being of the said board, and such other public officer or officers as the Lord Chancellor shall appoint, shall be official trustees of charitable funds,* and where trustees or other persons having in their names or in the name of any deceased person of whom they are representatives, in the books of the Bank of England, or of the East India or South Sea Company, or of any other public company, any annuities, stock, or shares, or holding any government or parliamentary or other securities in trust for any charity, shall be desirous to transfer or deposit the same to or with the said official trustees in trust for such charity, or where any persons shall be desirous of transferring or depositing as aforesaid any annuities, stocks, shares, or securities for discharging any legacy or charge given or made to or for the benefit of any charity, or where it shall appear to the Court of Chancery, or to any judge of such court, or of any [district court of bankruptcy, or] county court having jurisdiction under this act,† that any annuities, stock, shares, or securities held in trust for any charity ought, for the purpose of security or convenient administration, to be transferred or deposited as aforesaid, it shall be lawful for

Judge may order trustees, &c. holding stock, &c. belonging to a charity subject to his jurisdiction to transfer same to official trustees.

(*q*) See n. (*i*), *supra*.

16 & 17 Vict. c. 137, s. 51.

such court or judge† to order the transfer or deposit of such annuities, stock, shares, or securities to or with such official trustees.

* As to how far payment out of court to the official trustees of charitable funds is payment to persons "absolutely entitled" or to persons "entitled" within the meaning of sects. 69 and 80 respectively of the Lands Clauses Consolidation Act, 1845, see *ante*, p. 124.

† The same power is given to the Charity Commission by sect. 22 of the Charitable Trusts Amendment Act, 1855, and is now chiefly exercised by them.

Before making an order authorizing the transference of trust funds to the official trustees of charitable funds, the commissioners require (1) that the funds should be effectually impressed with an express charitable trust duly declared by an instrument in writing; and (2) that some trustee or trustees should be designated to whom the income of the fund may be remitted by the official trustees, and by whom it may be administered in accordance with the declared trusts. The following are forms by which these objects may be effected on the creation of a charitable trust, which it is proposed from the first to transfer to the official trustees:—

Declaration of trusts of money.

I or we of in the county of being desirous of paying, with the authority of the Charity Commissioners for England and Wales, to the banking account of "The Official Trustees of Charitable Funds" at the Bank of England, the sum of sterling in order that the same may be invested in the purchase in their name of and that the dividends thereof may be applied to the charitable purposes, and through the agency of the local trustees, hereinafter declared and appointed, and being required by the said commissioners, previously to such payment, to declare the intended trusts of the premises, do hereby declare that the said sum of sterling is proposed to be paid by or by procurement into the name of the said official trustees, under the order of the said commissioners; upon trust that the dividends to arise from the aforesaid investment may for ever thereafter be paid or remitted by the said official trustees unto and their successors, as the local trustees of the charity intended to be hereby created, or unto any or either of the said trustees, whose receipt shall be a sufficient discharge for the same, but for their joint account and disposal; upon trust to be applied by the said trustees to the following purposes (that is to say);

And it is desire that the charity intended to be hereby created shall be called

In witness whereof have hereunto set hand this day of one thousand eight hundred and

Signed, by the above-named in the presence of

Declaration of trust of stock.

I or we of in the county of being desirous of transferring, with the authority of the Charity Commissioners for England and Wales, into the name of "The Official Trustees of Charitable Funds"

the sum of in order that the dividends thereof may be applied to the charitable purposes, and through the agency of the local trustees, hereinafter declared and appointed, and being required by the said commissioners, previously to such transfer, to declare the intended trusts of the premises Do hereby declare that the said sum of is proposed to be transferred by or by procurement into the name of the said official trustees, under the order of the said commissioners; upon trust that the dividends to arise therefrom may for ever thereafter be paid or remitted by the said official trustees unto and their successors, as the local trustees of the charity intended to be hereby created, or unto any or either of the said trustees, whose receipt shall be a sufficient discharge for the same, but for their joint account and disposal; upon trust to be applied by the said trustees to the following purposes (that is to say);

16 & 17 Vict. c. 137, s. 51.

And it is desire that the charity intended to be hereby created shall be called

In witness whereof have hereunto set hand this day of one thousand eight hundred and eighty

Signed, by the above-named in the presence of

N.B.—Such deed declaring the charitable trust must be impressed with a stamp of *5s.* for every principal sum of 100*l.* or fraction thereof, which may, if desired, be affixed through the agency of the officers of the commissioners.

52. The secretary of the said board shall keep separate accounts of the annuities, stock, shares, and securities belonging to each separate charity, and the said official trustees shall pay the dividends or interest or income thereof to the trustees or persons acting in the administration of such charity, or otherwise dispose thereof, and transfer such annuities, stock, shares, or securities (when occasion shall require), as the Court of Chancery, or any judge of such court, or of any [district court of bankruptcy, or] county court having jurisdiction under this act, or other lawful authority (*r*), shall direct.

Secretary to keep separate accounts of funds of each charity.

The powers given by ss. 47-52 to the secretary of the board and to the official trustees of charitable funds to hold charity land as bare trustee and to have transferred to them the funds of charities are stated by the com-

(*r*) *E. g.*, under sect. 2 of the Charitable Trusts Act, 1860, the Board of Charity Commissioners.

16 & 17 Vict. c. 137, s. 52.

missioners in their Twenty-ninth Report, to be attended by the following benefits: 1, in the case of land, the simplification of title to charity property and the saving of the heavy and recurring expense of conveyances on each appointment of trustees; 2, in the case of charitable funds, the safety of capital and the relieving of charities from all expense and delay in obtaining payment of income when due. The necessity for the concurrence of the secretary of the board as official trustee of charitable lands in dealings with such lands has been dispensed with, except in the case of sales, and it is only in this case or on the institution of legal proceedings in respect of land vested in him that his legal ownership is exercised. The duty of the official trustees of charitable funds in respect of funds standing in their name is confined by sect. 52 to remitting (free of charge) as they become due, the dividends and income of the funds. It was proposed by the Charitable Trusts Bill of 1881, to facilitate the vesting in the official trustees of that part of the general aggregate of charity property in the country which was not already so vested.

Trustees may deposit deeds, &c. for security in a repository provided by the board.

53. It shall be lawful for any trustees or other persons having the custody of any deeds or muniments of or relating to such charity to deposit the same for security in a repository which may be provided by the said board, subject to any regulations to be made by the said board under this act.

Power to board to frame schemes for the appropriation of charitable property to varied trusts.

54. Where upon the application of any trustees or other persons concerned in the management or administration of any charity, or interested in the benefits thereof (and after such examination or inquiry as the board may think necessary in relation thereto), or upon any report of an inspector, or information otherwise obtained by the said board under this act, with relation to any charity, it shall appear to the said board to be desirable to have a new scheme for the application or management of the charity, and such new scheme as contemplated or considered desirable by the board cannot be, or it shall in the opinion of the board be doubtful whether it can be carried into complete effect by the Court of Chancery, or by any [district or] county court under the jurisdiction created by

this act, or otherwise than by the authority of Parliament, it shall be lawful for the said board in every such case provisionally to approve and certify such new scheme in the manner and subject to the regulations hereinafter mentioned. 16 & 17 Vict. c. 137, s. 54.

The Court of Chancery had under the old practice jurisdiction to settle schemes for charities, either upon information, or in an administration action (*s*). The sole exception was where there was a gift, the charitable intent of which was clear, though no trustee was named and no particular purpose mentioned which could be carried out. In such a case the gift was applied in charity, not by the Court of Chancery, but under the king's sign manual (*t*). Application to Parliament for confirmation of a scheme would only be needed when there were provisions in the scheme inconsistent with Acts of Parliament, local or public, in force at the time, or where the scheme proposed was one which transgressed the limits of the equitable doctrine of *cy près* (*t*).

55. One month at least before any such new scheme shall be so provisionally approved, notice thereof shall be given in such manner as the board may in each case consider proper or expedient for ensuring due publicity, and every such notice shall contain such particulars of the proposed scheme as the said board think fit, and as shall be deemed by the said board sufficient to show the nature of such scheme, and where the nature thereof cannot conveniently be shown in the said notice, such notice shall refer to some convenient place within the parish or district, and to the office in London of the registrar of county courts judgments (*u*), where a copy of the proposed scheme shall be deposited and may be inspected, and every such notice shall require any objections to such scheme to be

Notice to be given before approval of schemes, and objections may be submitted for the consideration of the board.

(*s*) It was given additional jurisdiction on application under sect. 28 of this Act, and on petition under Sir Samuel Romilly's Act, *ante*, p. 145. For cases in which the court will administer charitable gifts without scheme, see *In re Lea, Lea* v. *Cooke*, L. R. 34 Ch. D. 528.

(*t*) See Introduction, Part III.

(*u*) Sect. 43 of the Charitable Trusts Amendment Act, 1855, substitutes for these words "the Office of the Board."

16 & 17 Vict. c. 137, s. 55.

stated or transmitted to the said board or their secretary within one month from the time when the notice shall have been given.

Board may alter or modify or approve of schemes.

56. If after such notice as aforesaid any objections or suggestions shall be made, the board shall consider the same, and may thereupon, if to them it shall seem fit, alter or modify the scheme according to any such objections or suggestions; and after all such objections and suggestions, if any, have been disposed of, or if no such objections or suggestions shall have been made, the board, in case they shall not think fit to refer such scheme to an inspector under the provision next hereinafter contained, may proceed to approve such scheme, and to certify the same in manner hereinafter mentioned.

The matter of schemes may be referred to an inspector for local inquiry.

57. Upon the requisition of any person interested in the charity in question (in case the said board after due consideration shall be of opinion that there are sufficient grounds for complying with such requisition), or in any other case, if the said board shall consider it desirable, the matter of any scheme in question may be referred by the said board to one of their inspectors, and such inspector shall thereupon proceed to make a local inquiry and examination into the matter of the scheme in question, and for the purposes of such inquiry such inspector may hold a sitting or sittings in some convenient place in the parish or one of the parishes or the district to or in which respectively the charity in question is wholly or partially situated or is administered, and may take and receive any evidence and information, and hear and inquire into any objections or questions relating to the scheme or charity in question, and may from time to time adjourn any such sitting, and public notice shall be given by such inspector of every such sitting (except an adjourned sitting) fourteen

days at the least before the holding thereof, in such other mode as in the judgment of the said board shall be sufficient to ensure publicity. 16 & 17 Vict. c. 137, s. 57.

58. Every inspector to whom any such matter shall be referred shall report in writing to the said board the result of his inquiry, and whether in his opinion the scheme in question should be approved with or without any alteration or modification thereof, and such report shall specify or indicate the alterations (if any) which such inspector shall consider desirable, with the reasons for the same, and also the nature of the objections (if any) which shall have been made to the scheme, and the opinion of the said inspector thereon, and the said board shall consider such report, and if, as the result of such report or after further inquiry, they shall be satisfied therewith, they may proceed to approve the scheme in question either with or without any alteration, and to certify the same in manner hereinafter mentioned. Inspectors to report the result of inquiry to the board.

59. Every scheme to be approved by the said board shall be certified by them, and for that purpose shall be embodied in a certificate to be made by the said board, and sealed with their seal; and in every case a copy of such certificate shall be deposited in some convenient place within the parish or one of the parishes or the district in which the charity in question shall wholly or partially be situated or administered, and at the office in London of the registrar of county courts judgments (*x*), and a notice shall also be given, in such manner as the board shall direct, which notice shall refer to the certificate so depo- Schemes when approved to be certified by the board.

Copy of such certificate to be deposited in the parish or district and notice given.

(*x*) Sect. 43 of the Charitable Trusts Amendment Act, 1855, substitutes "the Office of the Board."

16 & 17 Vict. c. 137, s. 59.

sited, and shall state the intention of the board to proceed with the scheme thereby certified.

Annual report to be laid before Parliament, which shall set forth all the schemes approved.

60. The said board shall in the month of February in every year make a report to her Majesty of all their proceedings during the preceding year up to the thirty-first day of December then last, and such report shall, within fourteen days after the making thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or otherwise within fourteen days after the meeting thereof; and in such report the said board shall specially distinguish and set forth in full all the schemes (if any) approved by them under the provisions lastly hereinbefore contained, together with the grounds of such their approval, and the objections (if any) which have been made thereto, and all proceedings had in respect of such objections and the grounds on which any such objections have been overruled; and in case it shall be enacted by any Act of Parliament that any such scheme or schemes so certified shall be confirmed and take effect, either with or without any alterations or modifications thereof respectively, every such act shall be deemed a public general act (*y*).

The jurisdiction under this and the six preceding sections has practically ceased to be exercised for some time past. The Commission not being directly represented in Parliament, it has been found a task of the greatest difficulty to get through Parliament a Bill dealing with a charity scheme (*z*).

Accounts of trustees of charities to be delivered to the clerks of county courts, clerks of the peace, and to the board.

61. The trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity, [and on or before the twenty-fifth day of March in every year, or on or before

(*y*) See the City of London Parochial Charities Act, 1883 (46 & 47 Vict. c. 36), s. 47.

(*z*) See P. P. 1884, Vol. 9, p. 11.

such other day as shall or may be fixed and appointed for that purpose by the said board, shall cause a statement in writing to be made of the income and revenues, whether actually paid or then due, and the actual receipts and expenditure of such charity for the year ending on the thirty-first day of December then next preceding, or on some other convenient day to be fixed and appointed for that purpose by the said board, and also a balance-sheet containing a clear statement of the balance of such account, which statement and balance-sheet respectively shall be certified under the hand of some one or more of such trustees or persons (and audited by the auditor of such charity, if any there be); and as to every charity whose gross annual income for the time being shall not exceed thirty pounds, every such statement and balance-sheet respectively, or a duplicate or true copy thereof respectively, shall be delivered or sent by such trustees or persons free of charge to the clerk of the county court or some one of the county courts (if more than one) to whose jurisdiction such charity may be subject under this act (in case such charity be subject to the jurisdiction of any county court under this act), or if such charity be not subject to the jurisdiction of any county court, then to the clerk of the county court for the district or any one of the districts (if more than one) wherein or nearest adjoining whereto such charity is established, or the property thereof (in whole or in part) is situate or administered and distributed; and as to every charity whose gross annual income for the time being shall exceed thirty pounds, every such statement and balance-sheet, or a duplicate or true copy thereof respectively (unless the said board shall otherwise direct), shall be delivered or sent free of charge to the clerk of the peace for the county or the division of the

16 & 17 Vict. c. 137, s. 61.

16 & 17 Vict. c. 137, s. 61.

county or some one of the counties or divisions of counties (if more than one) in which the charity is established, or the property thereof is wholly or partially situated or administered and distributed; and every such statement and balance-sheet, or a duplicate or true copy thereof respectively, shall be kept and registered without fee or reward by the registrar of county courts judgments or the clerk of such county court, and the clerk of the peace of such county or division respectively, and shall be open to the inspection of all persons, at all seasonable hours, on payment of the sum of one shilling to the registrar or clerk for every such inspection; and any person may require and have a copy of any such statement and balance-sheet, or of any part thereof, paying therefor to such registrar or clerk after the rate of twopence for every seventy-two words or figures; and a duplicate or copy of every such statement and balance-sheet to be made according to the foregoing provision, so certified and audited as aforesaid, shall be delivered or transmitted, through the post or otherwise, free of charge, by such trustees or other persons, to the said board, on or before the said twenty-fifth day of March in every year, or such other day as may be fixed and appointed by the said board as aforesaid; and the said board may from time to time by any order direct that the statement and balance-sheet, or a duplicate or true copy thereof respectively, of the accounts of any charity whose gross annual income exceeds thirty pounds shall be delivered or sent to the clerk of the county court in the same manner as if the income of such charity did not exceed thirty pounds; and the said board may make and give such further and other orders and directions in relation to the delivery and publication of such accounts, and the form thereof, as they may think fit,

which directions and orders shall be obligatory on and obeyed by all such trustees and persons as aforesaid] (*a*). 16 & 17 Vict. c. 137, s. 61.

62. This act shall not extend to the universities of Oxford, Cambridge, London, or Durham, or any college or hall in the said universities of Oxford, Cambridge, and Durham,* or to any cathedral or collegiate church, or to any building registered as a place of meeting for religious worship with the registrar-general of births, deaths, or marriages in England and Wales, and *bonâ fide* used as a place of meeting for religious worship;† [nor shall this act, for the period of two years from the passing thereof, extend or be in any manner applied to charities or institutions, the funds or income of which are applicable exclusively for the benefit of persons of the Roman Catholic persuasion, and which are under the superintendence or control of persons of that persuasion] (*b*) nor shall this act extend or be applied to the commissioners of Queen Anne's Bounty, or to the British Museum, or to any friendly or benefit society, or savings bank, or any institution, establishment, or society for religious or other charitable purposes, or to the auxiliary or branch associations connected therewith, wholly maintained by voluntary contributions,‡ or any bookselling or publishing business carried on by or under the direction of any society wholly or Exemptions from the operation of act.

(*a*) Repealed by sect. 44 of the Charitable Trusts Amendment Act, 1855.

(*b*) Repealed by the Statute Law Revision Act, 1875. See also the Roman Catholic Charities Act, 1860 (*post*, p. 222), and the Acts which temporarily extended the exemption of Roman Catholic charities contained in this section—18 & 19 Vict. c. 76; 20 & 21 Vict. c. 76; 21 & 22 Vict. c. 51. By the last-mentioned act the exemption was continued until the 1st of September, 1859, after which date Roman Catholic charities became subject to the provisions of the Charitable Trusts Acts.

16 & 17 Vict. c. 137, s. 62.

partially exempted from this act, so far as such business is or shall be carried on by means of voluntary contributions only, or the capital or stock of such business; and where any charity is maintained partly by voluntary subscriptions and partly by income arising from any endowment, the powers and provisions of the act shall, with respect to such charity, extend and apply to the income from endowment only, to the exclusion of voluntary subscriptions, and the application thereof; and no donation or bequest unto or in trust for any such charity as last aforesaid, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions, shall be subject to the jurisdiction or control of the said board, or the powers or provisions of this act; and no portion of any such donation or bequest as last aforesaid, or of any voluntary subscription, which is now or shall or may from time to time be set apart or appropriated and invested by the governing or managing body of the charity, for the purpose of being held and applied or expended for or to some defined and specific object or purpose connected with such charity, in pursuance of any rule or resolution made or adopted by the governing or managing body of such charity, or of any donation or bequest in aid of any fund so set apart or appropriated for any such object or purpose as aforesaid, shall be subject to the jurisdiction or control of the said board or the powers or provisions of this act;§ and nothing in this act shall subject the funds or property of any missionary or other similar society, or the missionaries, teachers, or officers of such society, or of any branch thereof, which funds or property shall not be within the limits of England or Wales, to the jurisdiction of the said board: provided

Provisions as to charities supported partly by voluntary subscriptions.

always, that the said exemption shall not extend to any cathedral, collegiate, chapter, or other schools (*b*). 16 & 17 Vict. c. 137, s. 62.

* As to the application of this act to the Universities of Oxford and Cambridge, and the colleges therein, see *ante*, p. 106 on s. 17 (*c*).

† The exemption of such buildings from the operation of this act was confirmed with slight modifications by The Places of Religious Worship Registration Act, 1855 (*d*), by which it was enacted that every place of meeting for religious worship certified to the Registrar General under the act, 15 & 16 Vict. c. 36, or that act, and recorded by him as aforesaid, so long as the same should continue to be *bonâ fide*, used as a place of religious worship, and the record thereof should not have been cancelled as provided in the act, should be wholly free and exempted from the operation of the Charitable Trusts Act, 1853, and should not be subject or liable to any of the provisions of the same act, save that the exempted charities might avail themselves of the 63rd and 64th sections of the said act, if they should think fit.

By the Charitable Trusts Act, 1869 (*e*) the exemption is in part repealed.

‡ The exemption of charities maintained by voluntary contributions has been held to apply in the case of a legacy (not specially appropriated) to an unendowed charitable institution, supported in part by voluntary contributions (*f*), and therefore the consent of the charity commissioners to application for payment out of court of the legacy paid in under the Trustee Relief Act was not required. It was not stated under which clause of the section the charity in question came. The exemption has been held to apply equally, where a fund originating in voluntary contributions has been invested in land. In a recent case, an agreement had been entered into for the sale of premises which had been used as a charity school in connection with a City ward. The purchasers objected

(*b*) To the list of exemptions are added by sect. 49 of the Charitable Trusts Amendment Act, 1855, the Colleges of Eton and Winchester. For extension of the exemptions here granted to the later Charitable Trusts Acts, see the Charitable Trusts Amendment Act, 1855, ss. 47 and 48; Charitable Trusts Act, 1860, s. 1; and the Charitable Trusts Act, 1869, s. 3.

(*c*) *Attorney-General* v. *Sidney Sussex College, Cambridge*, 21 Ch. D. 514, n.; 15 W. R. 162; 15 L. T. N. S. 518, where it was suggested by the Lord Chancellor that the Universities could hardly have been intended to be deprived of the protection afforded to charities by sect. 17 of this act. See the remarks of Jessel, M.R., upon this case in *Glen* v. *Gregg*, 21 Ch. D. 514; 31 W. R. 149; 47 L. T. N. S. 285; 51 L. J. N. S. Ch. 784.

(*d*) 18 & 19 Vict. c. 81, s. 9.

(*e*) 32 & 33 Vict. c. 110, s. 15; see *post*, p. 235.

(*f*) *In re Wilson's Will*, 19 Beav. 594.

16 & 17 Vict. c. 137, s. 62.

on the title that the consent of the charity commissioners must be obtained or the sale be made under the Lands Clauses Consolidation Act, 1845. It being recited in the original conveyance to the trustees of the charity that the purchase-money had been paid out of funds belonging to the charity, and an affidavit being read to the effect that prior to 1808, when the purchase of the premises for the purposes of the school took place, the charity was supported by voluntary contributions, it was held that there was nothing to show that the charity was endowed, and that the consent of the charity commissioners to the sale under sect. 29 of the Charitable Trusts Amendment Act, 1855 (*g*) was not therefore needed (*h*). There was nothing, however, in the recital and the affidavit to show that the funds belonging to the charity, out of which the purchase-money was paid, were derived from the voluntary contributions by which the schools were, prior to 1808, supported. The purchase-money might, so far as the evidence went, have been a fund specially contributed for the purpose.

The words, "wholly maintained by voluntary contributions" were held to apply also in case of a fund collected for the relief of sufferers by an accident in the Hartley Colliery (*i*). So, where an action was brought by members of a committee representing the subscribers to the St. Saviour's (Chelsea) Church Building Fund against one of their members for an account, Pearson, J., said that "he was not satisfied that the consent of the Charity Commissioners was necessary." But the action was dismissed on other grounds (*k*).

No explanation is given in this section of the phrase "voluntary contributions." It would appear that it includes what are afterwards called "voluntary subscriptions, and donations and bequests . . . of which no special application or appropriation shall be directed or declared by the donor or testator." In a sense, of course, all gifts to charity are voluntary contributions, but that meaning is obviously impossible here. To confine the term, on the other hand, to "voluntary subscriptions," which have been defined as "such payments (whether recurrent or not), to the funds of a charity, as are usually given by annual subscribers to charities, for the purpose of meeting, in combination with other similar payments, the current expenditure of the charity without special appropriation," would exclude from the general exemption charities depending wholly upon voluntary and unappropriated donations, though having no regular subscribers. But this is impossible, for in a later part of the

(*g*) *Post*, p. 190.

(*h*) *Finnis and Young* to *Forbes and Pochin* (No. 2), L. R. 24 Ch. D. 591; 48 L. T. N. S. 814; 32 W. R. 55; 53 L. J. N. S. Ch. 141.

(*i*) *Pease* v. *Pattinson*, L. R. 32 Ch. D. 154; 55 L. J. N. S. Ch. 617; 54 L. T. N. S. 209; 34 W. R. 361.

(*k*) *Strickland* v. *Weldon*, L. R. 28 Ch. D. 426; 54 L. J. N. S. Ch. 452; 33 W. R. 545; 52 L. T. N. S. 247.

section unappropriated donations and bequests to a charity partly dependent upon endowment, are exempted from the jurisdiction of the commissioners; and, *à fortiori*, such unappropriated donations and bequests to a charity wholly dependent upon them would be exempted. 16 & 17 Vict. c. 137, s. 62.

§ The provisions as to charities supported partly by voluntary subscriptions, as they are described in the margin, have given rise to a good deal of discussion. The passage beginning "and where any charity is maintained partly by voluntary subscriptions" down to "the powers or provisions of this act," seems to be properly spoken of as dealing with three distinct cases of exemption.

A. Voluntary subscriptions to a mixed charity supported partly by voluntary subscriptions, partly by endowment, whatever that may mean here as opposed to voluntary subscriptions, which, according to the interpretation given to endowment in sect. 66, would be included in it.

B. Donations or bequests to a mixed charity, of which no special application or appropriation shall be directed or declared by the donor or testator, and which may legally be applied by the governing or managing body of such charity as income in aid of the voluntary subscriptions.

C. Any portion of such donation or bequest, or of any voluntary subscription set apart or appropriated and invested by the governing or managing body of the charity (*i.e.*, a mixed charity, the only charity to which the preceding sentences refer), for the purpose of being held and applied or expended for some defined and specific object connected with such charity, in pursuance of any rule or resolution made or adopted by the governing or managing body of such charity, and any part of any donation or bequest in aid of any fund so set apart or appropriated.

The main question arises as to the nature of the third exemption. Does it include, by implication or, *à fortiori*, donations or bequests or voluntary subscriptions set apart or appropriated and invested, not for the purpose of being held and applied or expended for some defined and specific object connected with the charity, but for the general purposes of the charity, or are we to say that the presumption which might have arisen under exemptions A and B, that investments of voluntary subscriptions and donations to mixed charities, were equally exempt with the subscriptions and donations before investment, is negatived as to general investments by the mention in the investment paragraph of investments for a special purpose only.

The question arises in the case of *The Corporation of the Sons of the Clergy* v. *Sutton* (*l*), in which Lord Romilly, as Master of the Rolls, held that certain charity land could be sold without the sanction of the Charity Commissioners being first obtained. The corporation of the charity had contracted for the purchase of the estate in question in 1682, only four years after the incorporation of the charity. The bulk of the

(*l*) Otherwise called *The Corporation of the Sons of the Clergy* v. *Trustees of the Stock Exchange*, 6 Jur. N. S. 84; 27 Beav. 651; 8 W. R. 167; 29 L. J. N. S. Ch. 393; 1 L. T. N. S. 386.

16 & 17 Vict. c. 137, s. 62.

purchase-money was, in the first place, lent by twelve persons, who were secured by a first charge upon the property purchased. Before the 26th of March, 1684, six out of the twelve lenders were repaid; the other six accepted bonds of the corporation for the amounts due to them, and released the property from their claims.

The money was thus probably paid out of the general funds of the charity, derived from unappropriated subscriptions, donations, or bequests, *i.e.*, from voluntary contributions. The jurisdiction of the commissioners cannot have been excluded in virtue of the general exemption in sect. 62 of "charities wholly supported by voluntary contributions," for the charity in question was not wholly so supported, as special gifts or grants for special charitable purposes, distinct from the general purposes and objects of the corporation had been from time to time accepted by the governors.

The charity was thus a mixed charity and could be exempted from the jurisdiction of the commissioners partially only. The Master of the Rolls, however, in his judgment speaks throughout of voluntary contributions, and would thus seem to be treating the charity as one wholly exempt. But this cannot be, and the term voluntary contributions must be used as equivalent to the "voluntary subscriptions" and "donations or bequests of which no special application or appropriation shall be directed and declared by the donor or testator," spoken of in the following clauses.

Under which, then, of the three partial exemption clauses did the Master of the Rolls intend to bring the case in question?

It might be brought within the first exemption of voluntary subscriptions *and the application thereof*, which latter phrase might well cover investment in land or otherwise, were it not that the land in question does not appear to have been purchased out of subscriptions, *i.e.*, annual subscriptions alone; the interval of six years between the founding of the charity and the repayment of half the purchase-money to the lenders seems too short for the accumulation of annual subscriptions sufficient for that purpose, and the other half of the purchase-money was paid not out of subscriptions or donations at all, but by bonds of the corporation, the interest on which would be paid out of the general funds of the charity, from whatever source those funds might be derived. The term "voluntary subscription," it would seem, must be used as somehow distinguished from donation or bequest, for in the third partial exemption clause it is clearly opposed to it. It can only mean annual subscriptions, or unappropriated payments of the kind usually made by annual subscribers.

If the charity estate in question is said to be exempted under clauses A and B taken together, the difficulty arises that the application or investment of the donations or bequests mentioned is nowhere generally exempted, but only under clause C, when "set apart, or appropriated and invested, by the governing or managing body of the charity, for the purpose of being held and applied, or expended, for or to some defined and specific object or purpose connected with such charity, in pursuance of any rule or resolution

made or adopted by the governing body of such charity." Now, does this exemption of investments for a special purpose negative the exemption of investments for general purposes which might otherwise have been assumed from the general drift of the section? If it does, then not only general investments of unappropriated subscriptions, donations, and bequests in the case of a partly endowed charity would be still subject to the jurisdiction created by the Charitable Trusts Acts, but also investments, whether general or special, of "voluntary contributions" in the case of a charity wholly supported by what were originally unappropriated voluntary contributions. If that is so, the decision in *Finnis and Young* to *Forbes and Pochin* (No. 2) (*m*) would, equally with that in *Sons of the Clergy* v. *Sutton* (*n*), be founded on a mistake. 16 & 17 Vict. c. 137, s. 62.

On the other hand, it may well be that the last partial exemption was inserted from a fear that the preceding clause, speaking of "special application or appropriation . . . . directed or declared by the donor or testator," might have suggested the idea that special application or appropriation by the governing body of the charity as well would cancel the exemption of voluntary subscriptions, and originally unappropriated donations or bequests. The clause would, on this hypothesis, be put in to guard against a misconception, and would apply, *à fortiori*, to general investment or appropriation made for no specific object or purpose.

In any case the construction of the section rests for the present upon the decisions in *Finnis & Young* to *Forbes & Pochin*, and *Sons of the Clergy* v. *Sutton*, and according to these subsequent investments, whether general or special, and whether the charity be wholly or partially exempted, makes no difference to the original exemption.

The judgment of Lord Romilly in *The Sons of the Clergy* v. *Sutton*, was strictly followed in *The Royal Society of London* v. *Thompson* (*o*). In that case, the society, whose funds consisted partly of moneys or property given or bequeathed to it upon specific trusts, had, out of moneys arising solely from the voluntary subscriptions of the members, purchased real estate at A. Part of this it now contracted to sell; the purchaser objected that the consent of the Charity Commissioners under sect. 29 of the Act of 1855 must be first obtained. It was held that the society came within the words of the section "where any charity is maintained, partly by voluntary subscriptions and partly by income arising from any endowment," and that the society being exempted by sect. 62 of the Act of 1853, so far as such real estate purchased out of voluntary subscriptions was concerned, was also within sect. 48 of the Act of 1855, and was therefore exempted from the operation of both acts. Though sect.

(*m*) L. R. 24 Ch. D. 591; 53 L. J. N. S. Ch. 141; 32 W. R. 55; 48 L. T. N. S. 814.

(*n*) 27 Beav. 651; 6 Jur. N. S. 84; 8 W. R. 167; 29 L. J. N. S. Ch. 393; 1 L. T. N. S. 386.

(*o*) L. R. 17 Ch. D. 407; 29 W. R. 838; 50 L. J. N. S. Ch. 344; 44 L. T. N. S. 274.

16 & 17 Vict. c. 137, s. 62.

29 of the Act of 1855 was not expressly referred to in the report of *The Sons of the Clergy* v. *Sutton*, it was held that that section must have been before the notice of Lord Romilly, and that, therefore, the question was directly governed by the earlier case.

A definition of the word "endowment" is given in sect. 66 of this act, by a reference to which it would, therefore, seem that the use of the word here must be explained. But the definition in sect. 60, it has been held, must itself be limited by the words of this section, confining the word to property devoted to some specific or particular purpose or trust (*p*). In the opinion of Sir John Romilly, M.R., it would be impossible, if the word were used in its popular sense, to distinguish between a donation and an endowment. The distinction is to be found in the words of this section, "of which no special application or appropriation shall be directed or declared by the donor or testator." Where there is such "special application or appropriation," the donation is converted into an endowment. To make the interpretation clause, sect. 66, consistent with this, the meaning of that clause must be taken to be "not to enact that the possession by any charity of any property of the various kinds there enumerated constitutes an endowment, but that property of all the classes and characters there specified may be made the subject of endowment."

Exempted charities may petition commissioners to have benefit of act.

63 (*q*). It shall be lawful for any of the charities exempted from the operation of this act, by order or resolution duly made in conformity with the constitution or rules of such charity * (and which in that case only shall be binding), to apply by petition to the commissioners to have the benefit of this act either generally or as to any of the provisions herein contained; and such petition shall be under the seal of such charity if incorporated, and if not, then under the hands of the major part of the trustees and governing body of such charity; and in such case it shall be lawful for the commissioners, if they shall think fit, to make an order in conformity with such application, and such charity shall thenceforth be entitled to and be bound by all the provisions of this act, if admitted gene-

(*p*) *Corporation of the Sons of the Clergy* v. *Sutton*, 27 Beav. 651.

(*q*) Repealed by the Charitable Trusts Act, 1869; sect. 14 of that act being substituted for it.

rally thereto, or by such of the enactments thereof as shall be mentioned and specified in such order of the commissioners, but in either case in the same manner as if such charity had not been exempted from this act, or such exemption had not extended to the enactments specified in such order.

16 & 17 Vict. c. 137, s. 63.

* "Order or resolution duly made in conformity with the constitution or rules of such charity."

Where a resolution had been passed by a majority of the members of the original committee of the charity, which committee had not had its numbers filled up from time to time as the regulations of the charity required, it was held that the resolution so passed gave the Charity Commissioners no jurisdiction (*r*).

64 (*s*). Provided also, that if any question or dispute shall arise among the members of any charity exempted from the operation of this act in relation to any office, or the fitness or disqualification of any trustee or officer, or his election or removal, or generally in relation to the management of the charity, it shall be lawful for two-thirds of the members present at any special meeting, duly convened by notice for the purpose in the same manner in which meetings of such charity are by the rules thereof appointed to be held and convened, to refer such question or dispute to the arbitration of the commissioners, who shall accept such reference and act therein as arbitrators, and their award shall be final, and may be made a rule of her Majesty's High Court [of Chancery].

Disputes among members of exempted charities may be referred to arbitration of commissioners.

65 (*t*). The legal estate in all lands which at the time of

Legal estate of lands now

(*r*) *Hamilton* v. *Spottiswoode*, 15 W. R. 118; 36 L. J. N. S. Ch. 51; W. N. (1866) 340.

(*s*) Extended by sect. 46 of the Charitable Trusts Amendment Act, 1855, to the members of any charity which is within the operation of this act. See also Statute Law Revision Act, 1875.

(*t*) Repealed by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); sect. 133 of that act being substituted for it.

16 & 17 Vict. c. 137, s. 65.

vested in municipal corporations on charitable trusts to be vested in trustees. 5 & 6 Wm. 4, c. 76.

the passing of the act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, was vested in the body corporate of any borough which became subject to the provisions of the said act, or in any one or more of the members of such body corporate, in his or their corporate capacity, solely or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, in whole or in part in trust or for the benefit of any charitable uses or trusts whatsoever, and which legal estate shall not have been since duly conveyed or assured to and vested in the trustees appointed by the Lord High Chancellor under the provisions of the said act, or such of them as shall be surviving and continuing trustees, or otherwise lawfully conveyed, aliened, or disposed of by such body corporate or member or members thereof, shall from and immediately after the passing of this act, and without any actual conveyance, assignment, or other assurance thereof, be vested in the trustees so appointed, or such of them as shall be surviving and continuing trustees under such appointment as aforesaid, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances and upon such and the same trusts as the same were respectively subject to previously to such vesting; and in every case upon the death, resignation, or removal of any of the trustees, and upon any appointment of any new trustee or trustees respectively, the legal estate in the same lands, and in all other lands subject to any such charitable uses or trusts which may for the time being be vested in the trustees or any of them, or in any persons or the heirs or devisees of any person who may have died, resigned, or been removed, shall vest in the persons who after such death, resignation, or removal, and

such appointment of such new trustee or trustees respectively, shall continue or be the trustees for the time being, without any conveyance or assurance whatsoever. 16 & 17 Vict. c. 137, s. 65.

By sect. 133 of the Municipal Corporations Act, 1882, "Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the members thereof, in his or their corporate capacity, stood solely or together with any person or persons elected solely by that body corporate, or solely by any particular number, class or description of members thereof, seised or possessed for any estate or interest of land in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was, by the Charitable Trusts Act, 1833, vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835 (*u*), or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances and on such and the same trusts as the same was subject to before such vesting, then in every case on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for the time being vested in the trustees or any of them, or in any person, or the heirs or devisees of any person deceased, resigned or removed, shall vest in the persons who, after such death, resignation or removal, and such appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance."

But nothing in the section is to take away, abridge or prejudicially affect any power, authority or jurisdiction of the Charity Commissioners for England and Wales.

Interpretation of terms.

66. In the construction of this act, except where the context or other provisions of the act may require a different construction, the expression "Court of Chancery" shall mean and include the Master of the Rolls and every judge of the Court of Chancery in England; the expression "Lord Chancellor" shall mean and include the Lord Chancellor of Great Britain and the Lord Keeper and Commissioners of the Great Seal of Great Britain for the

(*u*) 5 & 6 Will. 4, c. 76, s. 71.

16 & 17 Vict. c. 137, s. 66.

time being; [the expressions "District Court of Bankruptcy" and "District Court" shall mean and include every district court of bankruptcy established or to be established under the act of the fifth and sixth years of the reign of her present Majesty, chapter twenty-two, or under any other act or acts passed or to be passed for the alteration or amendment or the extension of the same act, or for the establishment of any district court or courts of bankruptcy in England or Wales, and every commissioner or judge of every such district court;] (*v*) the expression "County Court" shall mean and include every county court holden or established or to be holden or established under the act of the ninth and tenth years of her Majesty, chapter ninety-five, or any act or acts passed or to be passed for the alteration or extension of the same act, and every judge of any such court; the expression "Charity" shall mean every endowed foundation and institution taking or to take effect in England or Wales,* and coming within the meaning, purvieu, or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four (*x*), or as to which, or the administration of the revenues or property whereof, the Court of Chancery has or may exercise jurisdiction (*y*);† the expression "Trustee" of any charity shall mean and include every person and corporation seised or possessed of or entitled to any real or personal estate, or any interest therein, in trust for or for

(*v*) Repealed by the Statute Law Revision Act, 1875, together with so much of the rest of the act as relates to district courts of bankruptcy; district courts of bankruptcy being done away with, and their jurisdiction transferred to the county courts by 46 & 47 Vict. c. 52, s. 92, sub-s. (1).

(*x*) For a list of what have and what have not been held to be charities within the meaning of 43 Eliz. c. 4, see Introd. Pt. II. *ante*, p. 29 *et seq.*

(*y*) For a further definition of charity, see sect. 48 of the Charitable Trusts Amendment Act, 1855.

the benefit of such charity, or all or any of the objects or purposes thereof, and every member of any such corporation; and the expression "the Board" shall mean the said charity commissioners sitting as a Board under this act; and the expression "Endowment" shall mean and include all lands and real estate whatsoever, of any tenure, and any charge thereon, or interest therein, and all stocks, funds, monies, securities, investments, and personal estate whatsoever, which shall for the time being belong to or be held in trust for any charity, or for all or any of the objects or purposes thereof; ‡ and the expression "Land" shall extend to and include manors, messuages, buildings, tenements, and hereditaments, corporeal and incorporeal, of every tenure and description.

16 & 17 Vict. c. 137, s. 66.

• "Taking or to take effect in England or Wales." These words, taken together with those in sect. 48 of the Charitable Trusts Amendment Act, 1855 (*z*), "Charity shall include every institution in England or Wales endowed for charitable purposes," have been held to include a charity, founded and endowed in England or Wales, although the revenues are applied abroad; and also, *semble*, a charity, whose revenues are applicable in England or Wales, though it was founded and endowed abroad (*a*). The question under this clause is not whether the charity is to be administered in England or Wales, but whether the endowed foundation takes, or is to take effect, in England or Wales. In sect. 48 of the Act of 1855, there is no limit of place within which the endowment is applicable.

† A charity under this clause is not less a charity, because its endowment is not perpetual (*b*).

‡ For the meaning of endowment in this section and sect. 62, see the notes on the latter section (*c*). The use of the word here is to be explained, as it has been held, by a reference to that section (*d*).

(*z*) *Post*, p. 205.

(*a*) *In re Duncan, In re Taylor's Trusts*, L. R. 2 Ch. 356; 15 W. R. 526; 16 L. T. N. S. 160; 36 L. J. N. S. Ch. 513.

(*b*) *In re Sir Robert Peel's School at Tamworth, Ex parte the Charity Commissioners*, L. R. 3 Ch. 543; 16 W. R. 773; 37 L. J. N. S. Ch. 473; 18 L. T. N. S. 541.

(*c*) *Ante*, p. 168.

(*d*) *Corporation of the Sons of the Clergy* v. *Sutton*, 27 Beav. 651; 6 Jur. N. S. 84; 8 W. R. 167; 29 L. J. N. S. Ch. 393; 1 L. T. N. S. 386.

16 & 17 Vict. c. 137, s. 67.

67. This act shall not extend to Scotland or Ireland.

Extent of act.

Short title.

68. This act may be cited as "The Charitable Trusts Act, 1853."

CHARITABLE TRUSTS ACT, 1855.

18 & 19 Vict. c. 124.

An Act to amend the Charitable Trusts Act, 1853.
[14th August, 1855.]

18 & 19 Vict. c. 124, s. 1.

Whereas it is expedient to extend and amend the Charitable Trusts Act, 1853, as hereinafter provided: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:—

16 & 17 Vict. c. 137, and this act to be construed together.

1. "The Charitable Trusts Act, 1853," hereinafter called "the principal Act," and this act, shall be construed together as one act, and any provisions of the principal act inconsistent with this act are hereby repealed.

Provision as to the salary of one of the Commissioners repealed.

2 (*a*). So much of the principal act (section 4) as provides that after the thirty-first day of March, one thousand eight hundred and fifty-seven, an annual salary shall be paid to one only of the commissioners besides the chief commissioner is hereby repealed.

Power to appoint

3. It shall be lawful for her Majesty and her successors,

(*a*) The repeal of this section was rendered necessary by sect. 3 of the Endowed Schools Act, 1869, and it was accordingly repealed by the Statute Law Revision Act, 1875.

18 & 19 Vict. c. 124, s. 3.

additional inspectors.

under the royal sign manual, to appoint additional inspectors (not exceeding three in number) for the purposes of this act and the Charitable Trusts Act, 1853, and such additional inspectors shall hold office during pleasure, and shall be possessed of the same powers, authorities, and jurisdiction, and be entitled to the same privileges and emoluments, as the inspectors appointed under the said former act of one thousand eight hundred and fifty-three.

The acts of the board, how to be authenticated.

4. Every act of the board may be sufficiently authenticated by the seal of the commissioners, and the signature of their secretary, or in his absence of the chief clerk.

Entries in and extracts from the books of the board, how to be authenticated.

5. All orders, certificates, schemes, and other documents issued under the seal of the board shall be deemed and taken to be the originals, and copies thereof shall be entered in the books of the board, and all such entries may be sufficiently certified by the signature of the secretary, or in his absence of the chief clerk: every order, certificate, scheme, and other document purporting to be sealed with the seal of the board shall be received in evidence without further proof; and any writing purporting to be a copy extracted from the said books, and to be certified as aforesaid, shall be received in evidence in like manner.

The powers of the Commissioners and inspectors to inquire into charities extended.

6 (*b*). The board, or any commissioner or inspector, such inspector acting under the authority of the board, may require written accounts and statements and answers to inquiries relating to any charity, or the property or income

(*b*) This and the three following sections are extended by sect. 49 of the Endowed Schools Act, 1869, to the commissioners and assistant commissioners under that Act; and by sect. 38 of the City of London Parochial Charities Act, 1883, to the assistant commissioners appointed in accordance with it.

thereof, to be rendered or made to them respectively by all or any of the following persons; that is to say,

18 & 19 Vict. c. 124, s. 6.

Trustees or persons acting or concerned in the administration of the charity, its property or income, or in the receipt or payment of any monies thereof:

Agents of any such trustees or persons:

Depositaries of any funds or monies of the charity:

Persons in the beneficial receipt of any funds thereof, or of any income or stipend therefrom:

Persons having the possession or control of any documents concerning the charity or any property thereof:

and the board, or the commissioner or inspector may require the persons rendering or making any such account, statement, or answer to verify the same by oath or otherwise, and may administer such oath: provided always, that nothing herein contained shall extend to give to the said board or their inspectors any power of requiring from any person holding or claiming to hold any property whatsoever adversely * to any charity, or free or discharged from any charitable trust or charge, any information, or the production of any deed or document whatever, in relation to the property so held or claimed adversely, or any charitable trust or charge alleged to affect the same.

* For the meaning of holding, or claiming to hold "adversely," see the notes to sect. 15 of the Charitable Trusts Act, 1853 (*c*).

Power to require trustees and others to attend and be examined.

7. The board, or any commissioner or inspector acting as aforesaid, may require all or any such trustees and persons as aforesaid to attend before them respectively at such times and places as may be reasonably appointed, for the purpose of being examined in relation to the charity, and to answer such questions as may be proposed to them, and to produce upon such examination any documents in their

(*c*) *Ante*, p. 98.

18 & 19 Vict. c. 124, s. 7.

custody or power relating to the charity or the property thereof, and may examine upon oath or otherwise all such persons and all persons voluntarily attending, and may administer such oath: provided always, that no person shall be obliged to travel in obedience to any such requisition more than ten miles from his place of abode.

Precepts or orders for the preceding purposes how to be made.

8. All requisitions made under the foregoing authorities shall be made respectively by the order of the board, or by precept under the hand of the commissioner or inspector making the same.

Persons not complying with requisitions, &c. to be deemed guilty of a contempt of the Court of Chancery.

9. Any person refusing or wilfully neglecting to comply with any such requisition, or with any order of the board, made under the provisions of this act or the principal act, or destroying or withholding any document required to be produced or transmitted by him, shall be taken to be guilty of a contempt of the High Court of [Chancery] (*d*), and shall be liable to be attached and committed by such court, on summary application by the commissioners to the same court, or to any judge thereof, and shall pay such costs attending such contempt as the said court or judge shall direct: Provided always, that the court may at any time discharge, on such terms as it may deem just, any person attached or committed on any such application, or on any application made under section fourteen of the principal act.

Parish property is within the purview of the Charitable Trusts Acts, and therefore the commissioners were within their powers in moving to commit for contempt of court under this section, and sect. 14 of the principal act, the churchwardens and vestry clerk of a parish who had failed to deliver accounts of the parish property when required to do so by the commissioners (*e*).

(*d*) Substitute for this the word "Justice;" see Supreme Court of Judicature Act, 1873, s. 16.

(*e*) *In re St. Bride's, Fleet Street, Church or Parish Estate*, W. N. (1877) 95, 149.

18 & 19 Vict. c. 124, s. 10.

Power to apportion parochial charities after division of parishes.

10. Where any parish or ecclesiastical district entitled to the benefit of a charity has or shall have been divided into separate parishes or ecclesiastical districts, and no apportionment of charities originally applicable to the parish or district so divided shall have been made by parliament or other competent authority, the board, in respect of all charities the gross annual income whereof does not for the time being exceed thirty pounds, may apportion the benefit of the charity between each new parish or district, or any portion thereof taken from the parish or district originally entitled to the whole benefit, and the remainder of such last-mentioned parish or district, in such manner and such proportions as, upon a consideration of the purposes of the charity, the population of each parish or district, and other circumstances, they may think fit, and may also apportion the principal endowments between such parishes or districts, if it be thought fit, and may appoint separate trustees of any part of the endowments (*f*).

It has been held, that on districts being carved out of a parish, the parish church alone is entitled to the benefit of lands which have been given and used for repair of the church, and known as the church estate (*g*).

Where a charity had been already apportioned among parishes or districts, the Court of Chancery was held to have jurisdiction to make a new apportionment, the circumstances of the several parishes or districts having in the meantime changed (*h*).

Evidence as to annual

11. The certificate of the board, that according to their

(*f*) Compare the statute 8 & 9 Vict. c. 70 (an Act for the further amendment of the Church Building Acts, making regulations for new churches built in place of or in addition to existing churches).

(*g*) *Re Church Estate Charity, Wandsworth*, 18 W. R. 1101; affirmed on appeal, 19 W. R. 456; L. R. 6 Ch. 296; 40 L. J. Ch. 157; 24 L. T. N. S. 243.

(*h*) *In re Campden Charities*, L. R. 24 Ch. D. 213; 31 W. R. 741; 48 L. T. N. S. 54; 52 L. J. N. S. Ch. 780.

18 & 19 Vict. c. 124, s. 11.

income of any charity not exceeding 30*l.*

judgment the gross yearly income of any charity does not for the time being exceed thirty pounds, shall be sufficient evidence of the amount of such annual income for the purpose of determining the jurisdiction under the foregoing provision.

The official trustees of charitable funds may be empowered to call for transfers to them of stock, &c.

12. Any court or judge having jurisdiction to order the transfer of stock in the public funds, or stock or shares of any public company, to the official trustees of charitable funds, shall have power also to authorize such trustees to call for a transfer of and to transfer such stock or shares, and may also order the payment to the same trustees of any principal monies of any charity under the same circumstances in which the transfer of stock to them may now be ordered.

The same power is extended by sect. 2 of the Charitable Trusts Act, 1860, to the Board of Charity Commissioners. A form of application to them for such an order is appended.

Form of Application for an Order of the Board of Charity Commissioners for England and Wales, vesting in "The Official Trustees of Charitable Funds" the right to call for the transfer of Stock.

To the Charity Commissioners for England and Wales.

In the matter of the charity called

in the parish of
in the county of

The undersigned being†

† Applications may be made—

By the trustees or persons acting in the administration of the charity or by a majority of them, or (where the income of the charity does not amount to 50*l.* or upwards)—

By any one or more of the trustees or persons administering or claiming to administer or interested in the charity, or—

18 & 19 Vict. c. 124, s. 13.

By any two or more inhabitants of any parish or place within which the charity is administered or applicable.

submit the following statements:—

* Insert exact amount, and correct description of stock.

1st. The above charity is possessed of £*

* Also the names, residences, and descriptions *exactly as stated in the bank books* of the persons in whose names the stock now stands.

per cent. annuities, standing in the names of *

in the books of the governor and company of the Bank of England upon the trusts stated in the

2nd. For the purpose of security or convenient administration the said annuities ought to be transferred to the account of "The Official Trustees of Charitable Funds," and the arrears of dividends (if any) due thereon should be received and recovered for the benefit of the said charity.

3rd. The said

Any other circumstances material to the application should here be stated.

are all deceased and

Under the foregoing circumstances the undersigned are desirous of obtaining an order of the Board vesting in "The Official Trustees of Charitable Funds," the right to call for the transfer of and to transfer into their name in trust for the said charity the above-mentioned sum of £ per cent. annuities. And also to receive and recover in trust for the said charity, all dividends accrued from the said annuities which shall be in arrear at the time of such transfer.

We declare that the above statements are in all respects true according to our information and belief.

Dated this day of 18 .

The applicants should here sign their names in full, also their addresses and descriptions.

13. No order for apportioning the benefits of any charity shall be made by the board until after such public notices shall have been given of the proposal to make the same as the board may consider expedient for insuring publicity in each parish or district in which the charity is or ought to

Notices to be given of certain orders of the board.

18 & 19 Vict. c. 124, s. 13.

be applied, or among all persons interested therein, nor until after the expiration of one month from the publication of such notice; and every such notice shall contain (so far as conveniently may be) sufficient particulars of the proposed order to show the objects thereof, and shall prescribe a time within which any objections thereto may be stated or transmitted to the board.

Proceedings upon the receipt of objections or suggestions.

14. All objections which may be made to any proposed order shall be considered by the board, who may suspend the making thereof for further inquiry, or may modify the same, as may be found expedient; and a copy of every such order when made shall, in the case of any local charity, be deposited for the space of one month in some convenient place within the parish or one of the parishes or the district in which the charity is applicable, and also be open to inspection at the office of the commissioners, and such publicity shall be given thereto among all persons interested in the charity as the board shall consider expedient; or if the charity be not local, then a copy of such order shall be open to inspection at the office of the commissioners, and public notice thereof shall be given in such manner as to the board shall seem fit, and in cases where there is a special visitor, notice shall be given to him.

The official trustee of charity lands constituted.

15. The secretary for the time being of the board shall be a corporation sole by the name of "The Official Trustee of Charity Lands," for taking and holding charity lands, and by that name (instead of the name of "Treasurer of Public Charities") shall have perpetual succession; and all land, or estates or interests in land, now vested in the "Treasurer of Public Charities" by that name shall become, upon the passing of this act, and by virtue

thereof, vested in like manner and upon the same trusts in "The Official Trustee of Charity Lands," and all provisions of the principal act which have reference to the treasurer of public charities shall operate as if the name of the "Official Trustee of Charity Lands" had been used therein instead of the name of "Treasurer of Public Charities." 18 & 19 Vict. c. 124, s. 15.

16. The acting trustees of every charity, or the majority of them, provided that such majority do not consist of less than three persons, shall have at law and in equity power to grant all such leases or tenancies of land belonging thereto, and vested in the official trustee of charity lands, as they would have power to grant in the due administration of the charity if the same land were legally vested in themselves; and all covenants, conditions, and remedies contained in or incident to any lease or tenancy so granted shall be enforceable by and against the trustees or persons acting in the administration of the charity for the time being, and their alienees or assigns, in like manner as if such lands had been legally vested in the trustees granting such lease or tenancy at the time of the execution thereof, and had legally remained in or had devolved to such trustees or administrators for the time being, their alienees or assigns, subject to the same lease or tenancy. Power to acting trustees to grant leases.

17 (*i*). The Lord Chancellor may from time to time by writing under his hand appoint any persons to be, jointly with the secretary for the time being of the said board, the official trustees of charitable funds, and remove any such trustees, and every such appointment or removal shall be published in the London Gazette. Appointments of official trustees of charitable funds regulated.

(*i*) With sects. 17, 18, 20, and 21 of this act, cf. sects. 12, 17, and 18 of the Charitable Trusts Act, 1860, by which further regulations with regard to the official trustees of charitable funds are enacted.

18 & 19 Vict. c. 124, s. 18.

Such trustees to have perpetual succession, and may hold funds in that name.

18. The present official trustees of charitable funds, and their successors, to be so appointed, shall have perpetual succession by the name of "The Official Trustees of Charitable Funds," and may hold by that name stock in the public funds, and stock and shares of any public company, securities, and monies, which shall respectively devolve to their successors, the official trustees of charitable funds for the time being, without transfer or assignment.

Funds to vest in the official trustees for the time being.

19 (*k*). All stock in the public funds vested in the joint names of Henry Morgan Vane, Thomas Hare and Walter Skirrow, Esquires, the present official trustees of charitable funds, shall upon the passing of this act be transferred by the governor and company of the Bank of England from their names to the account of the official trustees of charitable funds.

The official trustees to keep banking account.

20. The official trustees of charitable funds shall, for the purposes of their trust, keep a banking account in their official name in the books of the governor and company of the Bank of England, and the secretary of the board shall keep separate accounts of the monies held upon such account, and belonging to each separate charity.

Mode of drawing on the banking account.

21. All orders for payment of any money held upon such banking account shall be signed by one at least of the official trustees of charitable funds, not being the secretary of the board, and also by the secretary, and shall be countersigned by one of the commissioners, or shall be otherwise signed or authenticated in such manner as the Lord Chancellor shall from time to time by order under his hand direct; and such orders shall be a sufficient authority to the bank paying the same for all such payments.

(*k*) Repealed by the Statute Law Revision Act, 1875, as then obsolete.

22. Any trustee or other person may, on obtaining an order of the board for the purpose, transfer any stock or pay any money to the official trustees of charitable funds in trust for any charity.

19 & 19 Vict. c. 124, s. 22.

Trustees may transfer stock to official trustees.

Form of Application for an Order of the Board for the Payment of Money to "The Official Trustees of Charitable Funds."

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of the charity called *

in the of
in the county of

* Insert usual name or designation of the charity to which the money proposed to be paid belongs, and, if the charity is local, the name of the parish, township or place for the benefit whereof it has been founded.

The undersigned being *

* The applicants should here state in what manner or capacity they are possessed or interested in the money proposed to be paid, and must state the amount.

the particulars and trusts of which are stated in the accompanying paper,* and being desirous that the said sum of

* An extract or copy of the will or deed creating the trust should be sent, if possible, with the application.

should be paid to the banking account of "The Official Trustees of Charitable Funds," request the board to issue an order for that purpose.

I or We. declare that the above statements are in all respects true.

Dated this day of .

*

* The applicants should here sign their names, adding their professions or occupations and residences.

Form of Application for an Order of the Board of Charity Commissioners for England and Wales, authorizing the Transfer of Stock to "The Official Trustees of Charitable Funds."

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

Whitehall, London, S.W.

In the matter of the charity called *

* Insert usual name or designation of the charity to which the stock proposed to be transferred belongs, and if the charity is local, the name

18 & 19 Vict. c. 124, s. 22.

of the parish, township or place for the benefit whereof it has been founded.

* Applications may be made—

1. *By the person or persons in whose name or names the stock to be transferred stands, or, if they are all deceased,*

2. *By any of the trustees or persons administering or claiming to administer the charity, or,*

3. *By any person interested therein, or,*

4. *By two or more inhabitants of any parish or place within which it is administered or applicable.*

The specific capacity of the applicants to be stated.

The undersigned, being *

submit the following statements:—

* Insert exact amount and correct description of stock.

1. The above charity is possessed of £ *

per cent. annuities, standing in the names of *

* Also the names, residences and descriptions *exactly as stated in the bank books* of the persons in whose names the stock now stands.

(The stock receipt should also be sent if possible.)

in the books of the Governor and Company of the Bank of England upon the trusts stated in the accompanying paper.*

*An extract or copy of the deed or will creating the trust should be forwarded with this application, unless the foundation of the charity be already recorded in the Parliamentary Reports, to which reference should then be made.

2. For the purpose of security or convenient administration the said annuities ought to be transferred to the account of "The Official Trustees of Charitable Funds," and the arrears of dividends (if any) due thereon should be received and recovered for the benefit of the said charity.

3.*

* If any of the stockholders should be dead, their names should be stated here; and it should also be stated whether their deaths have been proved at the Bank of England, either in respect of the above or any other sum of stock. If so, either the bank register numbers marked on the probates of their wills or letters of admi-

nistration; or the amount and description of stock in respect of which their deaths have been proved, should likewise be stated. Failing this, certificates of their burial should, if possible, be forwarded with this application.

4.*

* State whether it is proposed to transfer the stock by personal attendance at the bank or under power of attorney. In the latter case, if desired, a blank power will be procured and forwarded to the applicants for execution; the cost of the power, 11*s.* 6*d.*, being paid out of the dividends.

5.*

* State whether there are any dividends at present due in respect of the said sum of stock, and the amount.

Under the foregoing circumstances the undersigned are desirous of obtaining an order of the board authorizing the transfer of the above-mentioned sum of £ per cent. annuities,

Or, if necessary, a like order vesting in "The Official Trustees of Charitable Funds," the right to call for the transfer of and to transfer the same stock,

Into the name of "The Official Trustees of Charitable Funds," in trust for the said charity. And also to receive and recover in trust for the said charity, all dividends accrued from the said annuities which shall be in arrear at the time of such transfer.

declare that the above statements are in all respects true according to information and belief.

Dated this day of 188 .

*

* The applicants should here sign their names in full, also their addresses and descriptions.

23. All principal monies belonging to any charity directed to be paid to the official trustees of charitable funds shall be paid to their account at the bank, and, subject to any order of the court or judge or of the board by which respectively the payment shall have been

As to disposal of principal monies paid to them.

18 & 19 Vict. c. 124, s. 23.

authorized, shall be forthwith invested in the public funds in the names of the official trustees of charitable funds, for the benefit of the charity to which they shall belong.

All dividends and interest due to the official trustees of charitable funds to be placed to their banking account.

24. The dividends arising from all stock in the public funds standing in the name of the official trustees of charitable funds shall from time to time be received by the governor and company of the Bank of England, under the authority of this act, for the credit of the said official trustees, and shall be placed to their banking account accordingly; and all dividends and interest arising from any other stock, shares, or securities standing in the name of or held by the official trustees of charitable funds shall be paid only to the governor and company of the Bank of England for the account of the same trustees; and the said trustees shall from time to time execute to the said governor and company all such powers as shall be found necessary for enabling them to receive and give effectual discharges for the last-mentioned dividends and interest.

For the regulation of transfers and payments to or by the official trustees.

25. No transfer of any stock, shares, or securities shall be made to the official trustees of charitable funds, nor shall any money, other than the dividends or interest of any such stock, shares, or securities as aforesaid, be paid to their account, except in pursuance of an order of the Court of Chancery, or of some judge thereof, or of a [district court of bankruptcy or] county court, or of the board; and no transfer of any such stock, shares, or securities shall be made by the official trustees, except under the order of such court or judge, or under the order of the board signed by two commissioners, or authenticated in such manner as the Lord Chancellor from time to time by any order under his hand direct; and no transfer to or by the official trustees shall be permitted by the governor and

company of the Bank of England or any other company contrary to this provision. 18 & 19 Vict. c. 124, s. 25.

26. Copies of all orders made by any court or judge for any transfer, deposit, or payment of stock, shares, securities, or monies to or by the official trustees of charitable funds shall be forthwith transmitted to the board by the parties obtaining such orders. Copies of orders affecting the account of the official trustees to be sent to the board.

27. Every order made under the principal act or this act, requiring or authorizing the transfer, payment, or deposit of any stock, shares, securities, or monies to or with the trustees of any charity or the official trustees of charitable funds, or conferring a right to call for or to make such transfer, shall be a complete indemnity to the governor and company of the Bank of England and all companies and persons for any act done pursuant to such order; and the said governor and company and other companies and persons shall be required to give effect or to conform to every such order, and it shall not be necessary for them to inquire concerning the propriety of such order, or the jurisdiction of the court or judge or the board to make the same. Indemnity to the bank and others.

28. All dividends arising from any stock in the public funds standing in the name of the official trustees of charitable funds, and which shall be certified by the board to the governor and company of the Bank of England to be exempt from the property or income tax, shall be paid or carried to the banking account of the official trustees without any deduction of such tax; and all dividends arising from any stock in the public funds standing in any other names or name, and which the board shall certify to the governor and company of the Bank of England to be Dividends on stock in name of official trustees to be carried to account free from income tax.

18 & 19 Vict. c. 124, s. 28.

subject only to charitable trusts, and to be exempt from such tax, shall be paid without any deduction thereof.

Restrictions of charges and leases of charity estates.

29. It shall not be lawful for the trustees or persons acting in the administration of any charity to make or grant, otherwise than with the express authority of parliament, under any act already passed or which may hereafter be passed, or of a court or judge of competent jurisdiction, or according to a scheme legally established, or with the approval of the board, any sale, mortgage, or charge of the charity estate, or any lease thereof in reversion after more than three years of any existing term, or for any term of life, or in consideration wholly or in part of any fine, or for any term of years exceeding twenty-one years.

This section is modified by the exemptions contained in sect. 62 of the Charitable Trusts Act, 1853 (*l*), and sect. 48 of this act, and therefore land purchased out of voluntary contributions is not within this prohibition (*m*).

It is a misconception of the purport of this section for the commissioners to forbid renewal of a lease for lives of charity lands, on the ground that a lease cannot be granted at all without their consent, even though the contract to grant such a lease existed before the coming into operation of the act (*n*). The covenant for renewal, under which the new lease was to be granted, was, however, void at law under the disabling statutes of Elizabeth, for it would have made the whole lease longer than the twenty-one years allowed by those statutes. Under these circumstances, a bill filed by the lessee against the governors of the charity, for the specific performance of the covenant for renewal, was dismissed, and with costs, for "the trustees of a charity ought not to be visited with costs because of the misapprehension of the Charity Commissioners as to the construction of a public statute" (*o*).

A form of application for the "approval of the Board" to a lease under this section is appended.

(*l*) *Ante*, p. 161.

(*m*) *Royal Society of London and Thompson*, L. R. 17 Ch. D. 407; 50 L. J. N. S. Ch. 344; 44 L. T. N. S. 274; 29 W. R. 838; see notes on sect. 62 of the principal act.

(*n*) Per Jessel, M. R., in *Moore* v. *Clench*, L. R. 1 Ch. D. 447; 24 W. R. 169; 45 L. J. N. S. Ch. 80; 34 L. T. N. S. 13.

(*o*) *Ibid.* L. R. 1 Ch. D. p. 451.

Form of Application for the Authority of the Board to grant a Lease (C. T. Act, 1855, s. 29).

18 & 19 Vict. c. 124, s. 29.

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of the charity called*
in the of
in the county of .

* Insert the usual name or designation of the charity, and the name of the parish, township or place for the benefit whereof the charity was founded, or in which it is administered.

† Trustees or persons acting in the administration or management.

The undersigned being the†

of the above-mentioned charity, and being of opinion that the particular property hereinafter mentioned, belonging to the same charity, may be beneficially leased in the manner hereinafter mentioned, submit to the board the following statement and proposal in relation thereto, and they request the board to make such orders under their seal, for and in relation to the granting of a lease thereof, as they may think fit.

State,

1. The mode and date of the appointments of the existing trustees (if any) of the charity, and the number originally appointed.

2. The general objects of the foundation.

3. Whether the charity property is legally vested in the trustees, and, if so, by what conveyance or assurance?

4. The name of the township, parish, and county in which the particular property proposed to be leased is situate.

5. The nature, extent, and general description of the same property, and the interest of the charity therein, and whether it forms the whole or part only of the charity property.

6. The manner in which the property to be leased has been let or occupied during the last three years.

7. The amount of the gross annual rent or income arising therefrom during each of the last three years.

8. The amount and particulars of the outgoings or deductions from such rent or income in each of such years.

9. The present annual letting or rackrent value of the property to be leased.

18 & 19 Vict. c. 124, s. 29.

10. The object of the proposed lease, and whether for building, repairing, improving, mining, or other purposes.

11. The reasons for supposing or believing that the grant of the proposed lease will be for the benefit of the charity.

12. The name, quality, profession, or occupation and residence of the proposed lessee, if any.

13. The amount and particulars of the proposed rent, and other reservations, if any.

14. The length or nature of the proposed term.

15. The nature of the *special* covenants or provisions (if any) intended to be inserted in the lease.

16. The name and address of any surveyor by whom the property has been or is proposed to be surveyed and valued on behalf of the charity, or to whom the terms and conditions of the proposed lease have been or are proposed to be submitted for approval.

NOTE.—If any report or valuation, or any map or plan of the property has been made, the same or a copy of each should be sent herewith. The commissioners will, if they think fit, require the property to be surveyed and valued, and the proposed lease to be reported on or approved by a surveyor appointed by themselves.

We declare that the foregoing statement is in all respects true according to our information and belief.

Dated this day of 18

*

* The date and the signatures and the personal descriptions and addresses of each individual applicant should be added here. Each signature should begin a separate line.

If the applicants be a corporate body their seal should be attached.

Before giving its approval to a sale or lease under this section, the board require information from competent surveyors which will enable them to judge how far such sale or lease is likely to be of advantage to the charity. They require that surveyors, instructed by the trustees of the charity, should inspect the property purposed to be sold, and forward to the office of the commission a valuation and report based upon their inspection, with a plan of the property, showing its abuttals and approaches, and identifying it as far as possible with its description in the tithe apportionment of the parish, or in an authoritative map or survey of the locality.

The report should, in the case of a sale, furnish information upon the following, as well as upon any other, material points:— 18 & 19 Vict. c. 124, s. 29.

1. The situation and general description of the property, stating the parish (and township, or other subordinate area, if any) in which it is comprised, its extent, and the mode of cultivation.
2. The tenancy and present rental of the property, and state of cultivation of the land, the condition of the buildings, and the amount of outlay upon them necessary for the maintenance of the full rent of the property.
3. The present improved annual letting value, and the amount and incidence of the land tax, tithe rent-charge, and other fixed outgoings.
4. The ordinary market value in fee simple in possession.
5. The additional value (stated separately), either by way of accommodation to an adjoining owner, or to a tenant, or for building purposes.
6. The prospect of a future increase in value, as building land, or otherwise.
7. The separate values (if any) of the timber upon, and of the minerals, brick, earth, &c., underlying, the property.
8. The mode in which a sale may most advantageously be effected, whether by private contract or by public auction, and the number, extent, and separate values of the lots (if any) into which the property should be divided, and which should be indicated on the plan.

And, where part only of a property is proposed to be sold,

9. The effect of a sale upon the remainder of the property, and its bearing upon the value of the part offered for sale.

In the case of a lease, the report should furnish information upon the following, as well as upon any other, material points:—

1. The situation and general description of the property, stating the parish (and township, or other subordinate area, if any) in which it is situated, its extent, and, if it includes agricultural land, the mode of cultivation.
2. The tenancy and present rental of the property, and its present condition.
3. The present improved annual letting value, and the amount and incidence of the land tax, tithe rent-charge, and other fixed outgoings.
4. The length of the term to be granted.
5. The proper amount of ground-rent, royalty, or other reservation.
6. The nature of any special covenants to be imposed upon the lessee.
7. The minimum amount to be expended in building by the lessee.
8. The class and character of the buildings to be erected, and the time to be limited for their completion.
9. The mode in which the property may be most advantageously divided and offered for letting, and the number, extent, and separate

18 & 19 Vict. c. 124, s. 29.

values of the plots (if any) into which it should be divided, and which should be indicated on the plan.

The following are clauses which may conveniently be inserted in the conditions of sale of charity property, when such property is proposed to be sold by auction by the trustees of the charity:—

[Where title derived under deed or will.]

The property offered for sale forms part of the ancient possessions of the charity, called , created by deed or other document, dated the day of , 1 , of which charity the vendors are the present trustees under or by virtue of a deed of appointment or other document, dated the day of , 18 . The property is offered for sale by the vendors as the trustees of the said charity, with the consent and under the authority of the Charity Commissioners for England and Wales. The purchaser shall admit the sufficiency of the title of the said trustees under the said , and the vendors shall not be bound to deliver any abstract of title, or to produce any other evidence of their title to the property sold, than the said , an attested copy of which will be furnished to the purchaser, if desired by him, at his expense, but the original of which will be retained by the vendors; and an official copy of the order of the said commissioners authorizing the sale, and a statutory declaration made by some competent person, that the property sold has been in the possession of the trustees of the said charity for upwards of thirty years, which copies and declaration respectively shall be prepared and furnished at the expense of the purchaser.

[Where property vested by order of the Charity Commissioners.]

The property offered for sale forms part of the endowment of the charity called , the legal estate whereof is now vested in the official trustee of charity lands, by an order of , dated the day of , 18 . The property is sold by the vendors as the trustees of the charity, appointed by , with the consent and under the authority of the said commissioners, and the purchaser shall admit the sufficiency of the title of the said trustees under the said order, and the vendors shall not be bound to deliver any abstract of title, or to produce any deeds or any other evidence of their title to the property sold, than an official copy of the order of the said commissioners appointing the said trustees, and of the order of the said commissioners sanctioning the present sale, and a statutory declaration made by some competent person that the property sold was included in the said orders, and has been in the possession of the trustees of the said charity for upwards of thirty years, which copies and declaration respectively shall be prepared and furnished at the expense of the purchaser.

A purchaser may require the concurrence of the Official Trustee of Charity Lands in a sale of charity lands with the approval of the board under this section. The following is a form of indenture embodying such concurrence:—

"This Indenture made the day of , 18 , between Daniel Robert Fearon, Esq., of Whitehall, in the city of Westminster, 'the Official Trustee of Charity Lands' for the time being, hereinafter referred to as the official trustee, of the first part, A.B., C.D., and E.F., of

, in the county of , being the trustees [*governors*] of the [*charity*], of the second part, and [*purchaser*], of the third part. 18 & 19 Vict. c. 124, s. 29.

"Whereas the parties hereto of the second part, hereinafter referred to as the trustees [*governors*], are the duly constituted trustees [*governors*] of the said charity.

"And whereas [*by an order made by the Board of Charity Commissioners for England and Wales on the day of , 18] [by a scheme made under the Endowed Schools Acts, and approved by her Majesty in Council on the day of , 18]* the legal estate in the land intended to be hereby conveyed was vested in the official trustee in trust for the charity. And whereas, by an order of the said board made on the day of , 18 , the said trustees [*governors*] were authorized within months from the date thereof to sell the land described in the schedule thereto (being the land hereinafter mentioned and intended to be hereby conveyed) for not less than the sum of £ , and to do and execute all proper acts and assurances for carrying the said sale into effect, and to give a conclusive discharge to the purchaser for the purchase-money to arise from such sale; and by the last recited order the official trustee was authorized and directed to concur in the conveyance of the said land to the purchaser if he should require such concurrence. Now this indenture witnesseth, that in consideration of the sum of £ paid to the trustees [*governors*] by the said [*purchaser*] for the purchase of the fee simple of the said land, the receipt of which the trustees [*governors*] hereby acknowledge, the said Daniel Robert Fearon, as such official trustee, pursuant to the authority so given to him by the last recited order, and at the request of the trustees [*governors*], testified by their execution hereof, hereby conveys, and the trustees [*governors*] hereby convey and confirm to the said [*purchaser*] All [*parcels*] To hold, to and to the use of the said [*purchaser*] in fee simple."

"*Note.*—The official trustee does not enter into any covenants."

Sinking fund to be provided for paying off mortgages in lieu of provision in mortgage deeds.

30. [So much of section twenty-one of the principal act as requires a compulsory provision to be inserted in every mortgage for the payment of the principal money borrowed by annual instalments, and for the redemption and reconveyance of the mortgaged estates within the period of not more than thirty years, is hereby repealed; but](*p*) the board authorizing any mortgage to be made of any charity estate shall make such provisions, by the

(*p*) The repealing part of this section is repealed by the Statute Law Revision Act, 1875.

18 & 19 Vict. c. 124, s. 30.

same or any other order as to them may seem necessary, for directing the trustees or persons administering the charity to discharge the principal debt or any part thereof by such yearly or other instalments within thirty years from the date of the security as to the said board may seem fit, or to form an accumulation or sinking fund out of the income of the charity for discharging the principal debt or any portion thereof, within the same period, and shall give directions as to the investment and accumulation of such fund, and the trustees for the time being, or persons administering the charity, shall carry such order into effect.

Extension of power of board as to compromise of claims.

31. The twenty-third section of the principal act shall extend to authorize a compromise or adjustment of any claim, demand, or cause of suit against any charity, or the trustees or administrators thereof, and the order of the board in relation thereto shall have the like effect as in the case of any compromise or adjustment for which provision is made by the said section.

Board may authorize payment for equality of exchange or partition.

32. The board may authorize the application of any funds belonging to any charity in payments for equality of exchange or partition, or in payment of any expenses incident thereto, or may authorize the trustees to raise any money for such purposes by mortgage of any land acquired on such exchange or partition, or belonging to the charity.

Power to ascertain lands charged with rents to charities.

33. Where there shall be uncertainty as to the specific part of any lands out of which any rent, annuity, or other periodical payment, not exceeding the yearly sum of ten pounds, charged upon some part of the same lands, for the benefit of a charity, shall be payable, it shall be lawful for the board, upon the application of the trustees or persons

acting in the administration of the charity, and with the consent of the persons interested, according to the aforesaid definition of "persons interested," in the same lands, to determine by their order the land charged with such rent, annuity, or other periodical payment, which shall thenceforth stand charged with such rent, annuity, or periodical payment accordingly, to the exoneration of the residue of such lands therefrom. 18 & 19 Vict. c. 124, s. 33.

34. The expenses incident to the application for and procuring of any such order of exchange or partition, or order determining the land charged with any rent, annuity, or periodical payment, shall be paid by the trustees or administrators of the charity, or by the other parties to such transactions, or by both, as the board may direct. Expenses of exchanges and partitions, and determining application of charges.

35. Any incorporated charity, or the trustees of any charity, whether incorporated or not, may, with the consent of the board, invest money arising from any sale of land belonging to the charity, or received by way of equality of exchange or partition, in the purchase of land, and may hold such land, or any land acquired by way of exchange or partition, for the benefit of such charity, without any licence in mortmain. Incorporated charities and trustees for charities may reinvest in land.

36. All orders of the board for the investment of money coming to any charity or the trustees thereof on any sale, exchange, or partition shall be carried into effect by the trustees or persons administering the charity; and all monies which the board shall order to be provided out of any income or property of a charity for the payment of the costs of any such transaction shall be provided or raised by the trustees or administrators of the charity, and applied accordingly. Order of board for investments to be carried into effect, and cost to be raised.

18 & 19 Vict. c. 124, s. 37.

Board may direct official trustees to convey lands, &c.

37. It shall be lawful for the board to authorize or order and direct the official trustee of charity lands and the official trustees of charitable funds respectively to convey lands, and to assign, transfer, and pay over stocks, funds, monies, and securities, as the board shall think expedient.

Leases, &c. to be valid, notwithstanding disabling Acts.

38. All leases, sales, exchanges, partitions, and transactions authorized by the board under the principal act or this act shall be valid and effectual, notwithstanding the act of the thirteenth year of the reign of Queen Elizabeth, chapter ten, the acts of the fourteenth year of the same Queen, chapters eleven and fourteen, the acts of the eighteenth year of the same Queen, chapters six and eleven, the act of the thirty-ninth year of the same Queen, chapter five, and the act of the twenty-first year of the reign of King James the First, chapter one, or any disabling act applicable to the charity the estates whereof shall be the subject of any such transaction.

Board may approve schemes for letting charitable property.

39. It shall be lawful for the board to prepare, and under their seal to approve of, any scheme for the letting of the property or any part of the property of any charity; and all leases granted by any trustees or persons acting in the management of any charity, pursuant to or in conformity with such scheme, shall be valid.

Power to refer bills of costs in charity matters to taxation.

40. The board may order the bill of costs or charges claimed by any attorney or solicitor on account of business conducted or transacted by him on behalf of any charity, or the trustees thereof, to be examined and taxed by the taxing masters of the Court of Chancery, or by the proper taxing officers of any of the superior courts at Westminster, who shall proceed to examine and tax the same bill

accordingly; and if the same shall be reduced upon such taxation by the amount of one sixth part or more of the amount thereof, the costs of the taxation shall be paid by such attorney or solicitor, but otherwise out of the funds of the charity by the trustees thereof; and the board may, after being satisfied as to any bill that it contains exorbitant charges, order any such bill to be so taxed, notwithstanding that the same may have been paid by the trustees of the charity at any period not more than six calendar months previously to such order; and any amount taxed off any such paid bill shall be a debt due from the attorney or solicitor to the trustees of the charity, and shall be forthwith paid by him to such trustees accordingly. 16 & 19 Vict. c. 124, s. 40.

41. Section twenty-seven of "The Charitable Trusts Act, 1853," shall be construed and operate as if the words "and the trustees of the charity shall be legally authorized to purchase and hold such land" had been omitted therefrom; and incorporated trustees of any charity shall be competent to purchase and hold lands for the purposes mentioned in the same section without licence in mortmain. Construction of sect. 27 of 16 & 17 Vict. c. 137.

42. Any deed, will, or document relating to any charity may be enrolled by the board in books to be provided and kept by them for that purpose at their office, and a copy of any such deed, will, or document made from such books, and certified under the hand of the secretary or one of the commissioners, shall be received as evidence of the contents of the same deed, will, or document. Deeds, &c. relating to charities may be enrolled at the office, and copies to be evidence.

43. The fifty-fifth and fifty-ninth sections of the principal act shall be construed and operate as if the Construction of sects. 55 and 59 of

18 & 19 Vict. c. 124, s. 43.

16 & 17 Vict. c. 137.

words "the office of the board" had been inserted therein in the place of the words "the office in London of the registrar of county courts judgments."

Amendment of sect. 61 of 16 & 17 Vict. c. 137, and other provision made as to the annual returns of accounts by trustees of charities.

44. [Section sixty-one of "The Charitable Trusts Act, 1853," except so much thereof as enacts that the trustees or persons acting in the administration of every charity shall, in books to be kept by them for that purpose, regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such charity, shall be repealed as to all accounts which such trustees or administrators shall not have been bound to render before the passing of this act; and] (*q*) the trustees or administrators of every charity shall, on or before the twenty-fifth day of March one thousand eight hundred and fifty-six, prepare and make out and transmit to the board an account of the endowments then belonging to the charity, showing in the case of realty not in hand the manner in which the same is let or occupied, and in the case of personalty the existing investment or employment thereof, and in what names such investments are made; and such trustees or administrators shall also on or before the twenty-fifth day of March next after the acquisition of any endowment not included in the foregoing account prepare and make out, in like manner, and transmit to the board, a similar account of such last-mentioned endowment, and in case of any alienation, or charge, or transfer, of any real or personal estate of the charity, shall on or before the twenty-fifth day of March then next following transmit to the board an account of such alienation, charge, or transfer, and such trustees or administrators shall also, on or before the twenty-fifth day of March in

(*q*) The repealing part of this section is repealed by the Statute Law Revision Act, 1875.

every year, or such other day as may be fixed for that purpose by the board, or as may have been already fixed for rendering the accounts thereof required by the principal act, prepare and make out the following accounts in relation thereto; that is to say: 18 & 19 Vict. c. 124, s. 44.

(1.) An account of the gross income arising from the endowment, or which ought to have arisen therefrom, during the year ending on the thirty-first day of December then last, or on such other day as may have been appointed for this purpose by the board:

(2.) An account of all balances in hand at the commencement of the year, and of all monies received during the same year, on account of the charity:

(3.) An account for the same period of all payments:

(4.) An account of all monies owing to or from the charity, so far as conveniently may be:

which accounts shall be certified under the hand of one or more of the said trustees or administrators, and shall be audited by the auditor of the charity, if any; and the said trustees or administrators shall, within fourteen days after the day appointed for making out such accounts, deliver or transmit a copy thereof to the commissioners at their office in London, and in the case of parochial charities shall deliver another copy thereof to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified, who shall present the same at the next general meeting of the vestry of such parishes, and insert a copy thereof in the minutes of the vestry book; and every such copy shall be open to the inspection of all persons at all seasonable hours, subject to such regulations as to the said board may seem fit; and any person may require a copy of every such account or of

18 & 19 Vict. c. 124, s. 44.

any part thereof, on paying therefor after the rate of twopence for every seventy-two words or figures.

Forms for the rendering of accounts under this section are issued by the Charity Commission, in accordance with an order of the board dated July 29th, 1884.

In the case of a charity "regulated by a scheme under the Endowed Schools Act, 1869, and amending acts, or under any of those acts," or maintaining an endowed school which is not part of another charity, they include—

I. Under the head of gross income arising or due from the endowment,

(1) Description of the real property of the charity, with the acreage, names of tenants, terms of lease or holding, and gross yearly income of each property, together with the total gross yearly income arising from all such properties.

(2) The descriptions and amounts of stock in the public funds, the names and descriptions of the persons in whose names the investments are severally made, and the gross yearly income from all and each of such investments.

(3) The descriptions and amounts of other personalty, including securities for money and deposits in savings or other banks, the names and descriptions of the persons to whom the securities are made or the deposits due, and the gross yearly income arising from each and all of such sources.

(4) The income arising from school fees and other sources not before mentioned.

(5) The total income from all sources.

(6) The several outgoings and deductions from the gross income of each source, the net yearly income from each source, the arrears due at the commencement and close of the account, and the sums received.

II. Under the head of receipts,

The balance, if any, in favour of the charity and in hand at the commencement of the account, from real estate, from personal estate, from fees of scholars and from other sources to be classified under suitable heads.

III. Under the head of payments,

(1) Payments for the management of business and the like, not being direct payments for the educational purposes of the charity, nor coming under any other specific head mentioned in the form.

(2) Pensions to former teachers or officers, with names.

(3) School expenses, including payments to the head master or head mistress by way of either fixed stipend or capitation payment, to assistant masters or teachers, for school plant or apparatus, for examination expenses, cost of prizes and care of school buildings.

(4) Scholarships, described in each case by reference to the clause of the scheme or other authority under which they are respectively maintained. 18 & 19 Vict. c. 124, s. 44.

(5) Exhibitions similarly described.

IV. An account of all monies owing to or from the charity, to and from what persons, and on what accounts.

In the case of all other charities they include—

I. Under the head of gross income the same items.

II. Under the head of receipts the balance (if any) in favour of the charity at the commencement of the account, and subsequent receipts.

III. Under the head of payments the several payments for charitable purposes other than educational, the total of educational payments, the balance at close of the account, and in a separate column the details of educational payments (if any), including among other payments those for scholarships, exhibitions or otherwise to or for the benefit of scholars at elementary schools, and the like for scholars at places of education higher than elementary.

IV. Statements of all monies owing to or from the charity, to or from what persons, and on what account.

A simpler form is also issued, not specially mentioning educational payments.

A separate form is also issued for an account of all the endowments of a charity, whether of real or personal property. It requires the following particulars to be stated:—

As to real property.

1. Descriptions of land or houses let for the benefit of the charity, the several quantities, the terms for which they are let and the names of the tenants, the gross yearly rents and the fines (if any) taken on the leases.
2. The particulars and amounts of rent-charges and other fixed yearly payments, the property on which they are charged and in whose ownership such property is.
3. The description, quantities and gross estimated yearly value of property in hand retained for the purposes of the charity.
4. The description and gross yearly income of real property of any other description.

As to personal property.

1. The description, amount and gross yearly income of stock in the public funds, with the name and description of persons in whose names such stock is invested.
2. The description, amount and gross yearly income of the several securities for money held by the charity, with the date of the security and the names and descriptions of the persons in whose name or to whom the security is made or has been assigned.
3. The amount and gross yearly income of deposits of money in

18 & 19 Vict. c. 124, s. 44.

savings banks or elsewhere, with the persons in whose names they are deposited.

4. The description and gross yearly income of other personalty.

As to charges on the charity estates and other debts of the charity.

1. The description of the charge, whether by mortgage or otherwise, and the property on which it is made, the date of charge, amount of the debt, and the person to whom it is due.
2. The description and amount of all general or other debts of the charity and the persons to whom they are due.

As to debts due to the charity, not comprised in the description of securities, the description and amount of the debt, the rate of interest and the person from whom it is due.

Board may make orders as to delivery and publication of account by trustees, &c.

45. The board may from time to time make such orders as they may think fit in relation to the delivery or transmission of the said accounts, and the forms of such accounts, and such orders shall be executed by all trustees and persons from whom the accounts to which they may relate are required.

Application of sect. 64 of 16 & 17 Vict. c. 137.

46. The sixty-fourth section of the principal act shall apply as well to members of any charity within the operation of that act as to members of any charity exempted from the operation thereof.

Acts not to apply to Roman Catholic charities until 1st Sept. 1856.

47. [Neither this act nor the principal act shall, until the first day of September one thousand eight hundred and fifty-six, extend or be in any manner applied to charities or institutions the funds or income of which are applicable exclusively for the benefit of persons of the Roman Catholic persuasion, and which are under the superintendence and control of persons of that persuasion] (*r*), nor shall anything in this act extend to any of the cases which by the sixty-

(*r*) The earlier part of the section, relating to Roman Catholic charities, is repealed by the Statute Law Revision Act, 1875, as obsolete. On the exemption of Roman Catholic charities, see notes to sect. 62 of the Act of 1853, *ante*, p. 161; also the Roman Catholic Charities Act, *post*, p. 222.

second section of the principal act are excepted from the operation thereof. 18 & 19 Vict. c. 124, s. 47.

As to the term "charity."

48. In the construction of the principal act and this act the word "charity" shall include every institution in England or Wales endowed for charitable purposes, but shall not include any charity or institution expressly exempted from the operation of the Act of 1853, and words applying to any person or individual shall apply also to a corporation, whether sole or aggregate.

It was held by Vice-Chancellor Bacon in a recent case (*s*) that the Charitable Trusts Acts apply only to an endowed charity. The words of this section hardly warrant such an interpretation; they are "shall include," not "shall be confined to." On the other hand, the practical result of sect. 62 of the principal act would seem, from the cases, to be that a charity possessing no endowment, *i. e.*, no property appropriated by the donor to a special purpose, is exempt from the operation of the Charitable Trusts Acts. See notes on sects. 62 and 66 of the principal act, and also on sect. 29 of this act.

Act not to extend to Eton or Winchester.

49. Nothing in this act or in the principal act contained shall extend to the colleges of Eton and Winchester, or either of them.

Short title.

50. This act may be cited as "The Charitable Trusts Amendment Act, 1855."

(*s*) *Finnis and Young to Forbes and Pochin* (No. 2), L. R. 21 Ch. D. 591.

CHARITABLE TRUSTS ACT, 1860.

23 & 24 Vict. c. 136.

An Act to amend the Law relating to the Administration of Endowed Charities. [28th August, 1860.]

23 & 24 Vict. c. 136, s. 1.

WHEREAS it is expedient to provide increased and inexpensive facilities for the administration of endowed charities: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

The Charitable Trusts Acts to be construed with this act.

1. "The Charitable Trusts Act, 1853," and "The Charitable Trusts Amendment Act, 1855," and this act, shall be construed together as one act, and any provisions of the said former acts inconsistent with this act are hereby repealed.

Certain administrative powers to be exerciseable by the Charity Commissioners.

2. The board of Charity Commissioners for England and Wales, subject to the restrictions and rights of appeal hereinafter provided, shall have power from time to time, upon the application of any person or persons who, under the forty-third section of "The Charitable Trusts Act, 1853," might be authorized to apply to any judge or court for the like purposes, to make such effectual orders as may now be made* by any judge of the Court of Chancery sitting at chambers, or by any County Court [or district court of bankruptcy], for the appointment or removal of trustees of any charity, or for the removal of any school master or mistress or other officer thereof, or for or relating

to the assurance, transfer, payment, or vesting of any real or personal estate belonging thereto, or entitling the official trustees of charitable funds, or any other trustees, to call for a transfer of and to transfer any stock belonging to such estate, or for the establishment of any scheme for the administration of any such charity. 23 & 24 Vict. c. 136, s. 2.

* See sects. 28, 32, 42, 48, 49, 50 and 51 of the Charitable Trusts Act, 1853.

No. 1.—*Form of Application to the Board under the Jurisdiction created by the Charitable Trusts Act*, 1860, *s.* 2.

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of the charity called* in the of in the county of .

* Insert the usual name or designation of the charity, and the name of the parish or place (if any) to which it is attached.

† The alternative statement inserted here should be made to accord with the facts.

The undersigned being † [trustees or persons acting in the administration of the charity], or, as the case may be [inhabitants of the parish or place to which the charity is attached], submit the following statement:—

1. State shortly the creation and objects of the charity.

1. The charity was founded by

for the following objects, namely:—

2. The particulars of the endowment of the charity.

2. The charity is endowed with the following properties, namely:—

3. The particulars and amount of the income.

3. The ordinary yearly income of the charity amounts to £ , and consists of the following particulars, namely:—

4. The actual application of the income.

4. The net income is now applied to

5. The names, description and residences of the trustees or administrators. Each name should begin a separate line.

5. The present trustees are the following persons, namely:—

23 & 24 Vict. c. 136, s. 2.

or [as the case may be] the charity is administered by the following persons, namely:—

6. State whether any trustees or administrators, not parties to the application, are assenting to or dissenting from it.

6.

7. State under the following numbers any other circumstances material to the application.

7.

8.

Under the foregoing circumstances the undersigned are desirous of obtaining an order of the board for the following objects:—

Any of the objects here specified which the applicants may not desire to have included in the order may be struck out.

That is to say—

1. The removal of trustees, the following persons being proposed for removal:—

2. The appointment of new trustees, with all necessary and proper incidental directions.

3. The establishment of a scheme for the administration of the charity.

Insert names in full, addresses and descriptions, each name, &c. beginning on a separate line.

The following persons are recommended for appointment as trustees, namely:—

* The proposed scheme, if too long for insertion here, may be annexed to the application, and referred to accordingly.

The applicants recommend that a scheme be established to the following effect,* namely:—

The date and the signatures and the personal descriptions and addresses of each individual applicant should be added here. Each signature should begin a separate line.
If the applicants be a corporate body their seal should be attached.

We declare that the above statements are in all respects true according to our information and belief.

Dated this day of 188 .

No. 2.—*A Short Form of Application to the Board under the Jurisdiction conferred by sects. 2 and 4 of this Act.* 23 & 24 Vict. c. 136, s. 2.

[SHORTER FORM OF No. 1.]

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of
in the parish of
in the county of

The undersigned, being a majority of the surviving trustees of the above-mentioned charity, hereby apply to the commissioners for an order establishing a scheme for the future regulation and management of the said charity, and appointing trustees thereof, with all necessary and proper incidental directions.

Dated this day of 188 .

The date and the signatures, personal descriptions and addresses of each applicant should be added here. Each signature should begin a separate line.
If the applicants are a corporate body, their seal should be attached.

No. 3.—*Form of Application for the approval by the Board of Provisional Appointments of Trustees or Governors under Schemes.*

(N.B.—This form is for use in the case of any charity scheme, whether made under this act or not, whereby the approval of the board is required to render valid the appointment of co-optative trustees.)

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

In the matter of the charity
in the parish of
in the county of
now regulated by a scheme.*

* State when and by what authority the scheme was established or made.

The undersigned, being*

* The application may be made by the chairman of the meeting or by the clerk on behalf of the trustees or governors.

of the above-mentioned charity, submit the following statement;—

1. A vacancy in the office of
occurred on the day of , 18 ,
by the* of†

* State cause of vacancy.
† State full name, address, and description of trustee or governor who vacates his office.

23 & 24 Vict. c. 136, s. 2.

2. At a special meeting of the duly held on the day of , 18 , at which there were present:—

(in the chair),

it was resolved that*

* State full name, address and description of proposed new trustee or governor.

be provisionally appointed to fill such vacancy.

3. Under the foregoing circumstances the now apply to the Charity Commissioners to approve such provisional appointment under their official seal.

declare that the above statements are in all respects true according to information and belief.

Dated this day of 18 .

The applicant or applicants should here sign their names, adding the capacity in which they make the application.

Board to notify to trustees of charity their intention of exercising jurisdiction.

3 (*a*). The said board, previously to making any order under the jurisdiction vested in them by this Act, shall notify to the trustees or administrators (if any) of the charity to be affected thereby their intention of exercising such jurisdiction, by notice in writing, to be delivered to them, or sent to them by the post at their last known place of abode in Great Britain or Ireland.

The powers to be exer-

4 (*b*). The said board shall not make any order, under

(*a*) Amended by sect. 4 of the Charitable Trusts Act, 1869 (by which notice need not be sent to the trustee or administrator who has been privy to the application to the Board).

(*b*) See sect. 5 of the Charitable Trusts Act, 1869, by which, in such cases, a "writing signed by any person authorized in that behalf by a resolution passed by a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question," is sufficient. See also sect. 32 of the Endowed Schools Act, 1869, by which on the transfer to the Charity Commissioners of the powers of the Endowed Schools Commissioners, the jurisdiction of the former in respect of the initiation of schemes was extended.

the jurisdiction vested in them by this act, with respect to any charity of which the gross annual income, exclusively of the yearly value of any buildings or land used wholly for the purposes thereof, and not yielding any pecuniary income, shall amount to fifty pounds or upwards, except upon the application of the trustees or persons acting in the administration of the charity, or a majority of them, to be made to the said board in writing under their hands if they shall be unincorporated, or under their common seal if they shall be incorporated, and the board shall not make any order removing any trustee on the ground only of his religious belief.

23 & 24 Vict. c. 136, s. 4.

Jurisdiction exercisable over no charities of which the gross income shall exceed 50*l.* without application of trustees.

5. The said board also shall not exercise the jurisdiction hereby vested in them in any case which, by reason of its contentious character, or of any special questions of law or of fact which it may involve, or for other reasons, they may consider more fit to be adjudicated on by any of the judicial courts.

The board shall not exercise jurisdiction over contentious cases.

In a case which was clearly of a contentious character, and involved many special questions of law, the Master of the Rolls (Sir John Romilly) was of opinion that the Charity Commissioners should not exercise their jurisdiction, if at all, without the assistance of counsel. The Court of Appeal, in reversing his decision on the whole case, expressed no opinion upon this point (*c*).

6 (*d*). No order appointing or removing a trustee, or establishing a scheme for the administration of any charity, shall be made by the said board before the expiration of one calendar month after public notice of the proposal to make such order shall have been given, as they

Notices to be given of certain orders, and objections or suggestions to be received.

(*c*) *Re The Hackney Charities*, 12 W. R. 1129; 4 N. R. 530; 11 L. T. N. S. 35; on appeal, 11 L. T. N.S. 758; 34 L. J. N. S. Ch. 169; 11 Jur. N. S. 126; 13 W.R. 398.

(*d*) Explained by sect. 7 of the Charitable Trusts Act, 1869 (public notice of a modified order not necessary).

23 & 24 Vict. c. 136, s. 6.

may consider most expedient and effectual for ensuring the publicity thereof, in each parish or district in which the charity, if of a local character, shall be applicable, or among all persons interested therein; and no order removing a trustee or schoolmaster or mistress or other officer of a charity who shall have any known place of residence in Great Britain or Ireland, and who shall not be consenting to be discharged, shall be made before the expiration of one calendar month after notice of the proposal to make such order shall have also been delivered to him or her, or sent by the post or otherwise to such his or her place of residence, and until after sufficient hearing of the matter before the said board, or some member thereof, or one of their inspectors; and every notice hereby required shall contain (so far as conveniently may be) sufficient particulars of the objects of the proposed order, and shall prescribe a reasonable time within which any objections thereto or suggestions thereon may be made or transmitted to the board; and the said board shall receive and consider all such objections and suggestions, and may withhold, suspend, or modify their proposed order, as they shall thereupon, or in the result of further inquiry, or otherwise, think expedient.

Publication of definitive orders.

7. A copy of every such order when made shall, in the case of any local charity, be deposited for the space of one calendar month in some convenient place within the parish or one of the parishes or in the district in which the charity shall be applicable, and shall be open to public inspection there at all reasonable hours during the same period; and a copy also of every such order relating to any charity, whether local or general, shall be kept open to public inspection at all reasonable hours, at the office of the commissioners, during a like period of one calendar

month; and in each case effectual publicity shall be given to the making of the order by such means as the board shall consider most expedient for that purpose. 23 & 24 Vict. c. 136, s. 7.

Power to appeal against orders of board.

8 (*e*). The Attorney General, or any person authorized by him or by the said board, in the case of any charity, whatever may be the yearly income of its endowments, and any trustee or person acting in the administration of or interested in any charity of which the gross yearly income to be calculated in manner aforesaid shall exceed fifty pounds, or any two inhabitants of any parish or district in which the same shall be specially applicable,* may, within three calendar months next after the definitive publication of any order of the said board † appointing or removing a trustee or trustees, or for or relating to the assurance, transfer, payment, or vesting of any real or personal estate, or establishing a scheme for the administration of the charity, present a petition to the [High Court of Chancery] (*f*) in a summary way, appealing against such order, and praying such relief as the case may require; and any schoolmaster or schoolmistress or other officer removed by the order of the board, without the concurrence of the trustees or persons acting in the administration of the charity, or a majority of them, and without the approval of a special visitor, if any, of the charity may, within two calendar months (next after his or her removal), appeal in like manner against the order of removal; and the court, upon or before the hearing of any such petition of appeal as aforesaid or at any stage of the proceedings, may require, if it shall think fit, from the

(*e*) Amended by sect. 10 of the Charitable Trusts Act, 1869 (appeals limited in all cases to the Attorney-General, and any person authorized by him or by the Board). See also the Municipal Corporations Act, 1883, s. 9, sub-s. (4).

(*f*) This jurisdiction is, by sect. 34, sub-s. (3), of the Supreme Court of Judicature Act, 1873, assigned to the Chancery Division of the High Court.

23 & 24 Vict. c. 136, s. 8.

said board, their reasons for making the order appealed against, or for any part of such order, and may remit the same to the board for reconsideration, with or without any declaration in relation thereto, or may make any substitutive or other order in relation to the matter of the appeal, as it shall think just; and the court may make any order respecting the costs, charges, or expenses incident to the appeal, and may also, before hearing or proceeding with the same, require from any appellant other than the Attorney General, proper security for such costs, charges, and expenses as may be eventually payable by him; but no such petition of appeal shall be presented by any person, other than the Attorney General, before the expiration of twenty-one days after written notice, under the hand of such appellant, of his or her intention to present such petition, shall have been delivered to the said board at their office.

* It was held, on appeal from the Master of the Rolls, that this section does not give to two inhabitants of the parish or district in every case a right of appeal, without the consent of the Attorney-General, from a decision of the Charity Commissioners, but only where the gross yearly income of the charity exceeds 50*l.* The section consists not of three but of two parts only, the first giving the right of appeal to the Attorney-General or to any person appointed by him, or by the board, whatever may be the yearly income of the charity; and the second giving the right of appeal to the trustees or persons interested, or to two inhabitants of the parish or district where the gross yearly income of the charity exceeds 50*l.* The words "the same" must refer to the charity or income last before mentioned, a charity or income exceeding 50*l.* per annum. The policy of the legislature has throughout been to protect the smaller charities from the exhaustion of litigation to which they were formerly subject (*g*).

† The "definitive publication" of any order, the Master of the Rolls held to mean the final publication when the time for the receipt of suggestions and objections expires, and, therefore, when the final publication was on the 14th of December, a petition presented on the 12th of March following was in time (*h*).

(*g*) *Re The Hackney Charities*, 11 L. T. N. S. 758; 34 L. J. N. S. Ch. 169; 11 Jur. N. S. 126; 13 W. R. 398.

(*h*) *Ibid.*; 12 W. R. 1129; 4 N. R. 530; 11 L. T. N. S. 35.

23 & 24 Vict. c. 136, s. 9.

Who may be the respondent on appeals.

9. The Attorney General, if he shall think fit, or any person authorized by him or by the said board, may appear as the respondent upon any such appeal, and the court may make any order respecting the costs, charges, and expenses of the Attorney General or other defendant.

Powers to be applicable to charities vested in corporations, &c.

10. The jurisdiction vested by this act in the said board shall be exerciseable with reference to charities vested in any corporation sole or aggregate, who, either solely or jointly with any other person or persons, shall also be the recipients of the benefit thereof.

Jurisdiction of the district courts of bankruptcy and county courts enlarged.

11. The jurisdiction vested by "The Charitable Trust Act, 1853" (*i*), in the [district courts of bankruptcy and] county courts, over charities not possessing a larger gross yearly income than thirty pounds, shall be exerciseable by the said courts respectively for the like purposes and under the like provisions over charities of which the gross yearly income for the time being, to be calculated in manner aforesaid, shall not exceed fifty pounds, in the same manner as if the last-mentioned limit to the jurisdiction of the said courts had been fixed by the said former act.

Official trustees of charitable funds may be empowered to receive arrears of dividends.

12. Any court or judge, or the said board, having jurisdiction to authorize the official trustees of charitable funds to call for a transfer of and to transfer any annuities, stock, or securities, may empower them also to receive and recover, in trust for the charity to which the same shall belong, all dividends, interest, and income accrued from any such annuities, stock, or securities respectively, and which shall for the time being be in arrear.

Power for magistrates

13. Where any schoolmaster or mistress or other officer,

(*i*) 16 & 17 Vict. c. 137, s. 32, *ante*, p. 136.

23 & 24 Vict. c. 136, s. 13.

to give possession of school buildings and property held over by officers or recipients of charities.

or any recipient of the benefit of a charity, being in possession by virtue of his or her office, or as such recipient of any house, buildings, land, or property of the charity, shall have been removed from or shall cease to hold such his or her office, or his or her place as such recipient, but he or she, or any person claiming under him or her, shall refuse or neglect to relinquish the possession of such house, buildings, land, or property within one calendar month next thereafter, to his or her successor, or to the trustees or persons acting in the administration of the charity, or as they shall direct, it shall be lawful for any two or more justices of the peace acting for the district, division, or place in which such house, buildings, land, or property shall be situate, in petty sessions assembled, and they are hereby required, on the complaint of the said trustees or administrators, and on the production of an order of the said board certifying such school master or mistress or other officer or recipient to have been duly removed from or to have ceased to hold his or her office or place (which order under the seal of the said commissioners shall be conclusive evidence of the facts thereby certified, and of the jurisdiction of the said commissioners to make such order for all the purposes of this enactment, and shall afford a complete indemnity to all persons acting thereunder), to issue a warrant under the hands and seals of such justices to any constables or peace officers of the same district, division, or place, commanding them, within a period to be thereby appointed, not being less than ten or more than twenty-one clear days thereafter, to enter into the premises, and deliver possession thereof to the said trustees or administrators, or their nominee or agent, and to remove therefrom such former schoolmaster or mistress, or other officer or recipient, and all persons claiming in his or her right, as fully and effectually, and subject to the

same provisions, as nearly as the case will permit, as justices of the peace are empowered to give possession of any properties to the landlord or his agent upon the determination of the tenancy thereof, under an act passed in the first and second years of the reign of her majesty, chapter seventy-four, for facilitating the recovery of possession of tenements after the determination of the tenancy. 23 & 24 Vict. c. 136, s. 13.

14. Every schoolmaster and mistress appointed after the date of this act shall be removable from his or her office, after reasonable notice by the trustees or persons acting in the administration of the charity, as they shall think expedient in the interests thereof, so nevertheless that the removal by virtue only of this provision of a master or mistress who would be otherwise irremovable from his or her office shall be determined on by all or a majority of such trustees or administrators assembled at a meeting convened by due notice, delivered or sent by the post to all such trustees or administrators who shall have any known place of residence in Great Britain or Ireland, by the space of not less than twenty-eight days previously, for the special purpose of considering and determining on the question of such removal, and of which intended meeting a notice shall also be delivered or sent in like manner to the master or mistress by the same previous space, and so also that the resolution of the meeting for the removal of any such last-mentioned master or mistress shall be forthwith certified under the hands of the trustees or persons acting as aforesaid who shall have concurred therein, or under the hand of the chairman of the meeting, and shall within seven days next thereafter be transmitted to the said board for their approval, and the same shall not take effect unless or until the same shall have been approved by the said board, who may also, if they so think Masters and mistresses of endowed schools to be removable.

23 & 24 Vict. c. 136, s. 14.

fit, fix the time or any reasonable conditions at or under which the same shall come into operation; if also there shall be any special visitor of the charity who shall be resident in Great Britain or Ireland, and free from incapacity, no removal of any such last-mentioned master or mistress shall be made under the authority only of the preceding provision without the written consent of such visitor; provided always, that this section shall not apply to any endowed grammar school.

Sect. 21 of 16 & 17 Vict. c. 137, extended.

15. The power vested in the said board by the twenty-first section of "The Charitable Trusts Act, 1853," of authorizing the application of monies belonging to any charity, or to be raised on the security of the properties thereof, to the improvement of such properties, shall extend to authorize the application of any like monies to any other purpose or object which the board shall consider to be beneficial to the charity or the estate or objects thereof, and which shall not be inconsistent with the trusts or intentions of the foundation.

A majority of trustees to have legal power of dealing with the charity estates.

16 (*j*). A majority of two thirds of the trustees of any charity assembled at a meeting of their body duly constituted, and having power to determine on any sale, exchange, partition, mortgage, lease, or other disposition of any property of the charity, shall also have a legal power, on behalf of themselves and their co-trustees, and also of the official trustee of charity lands, where his concurrence would be otherwise required, to do, enter into, and execute all such acts, deeds, contracts, and assurances

(*j*) Repealed by the Charitable Trusts Act, 1869; sect. 12 of that Act being substituted for it, with the result of giving the same power to a bare majority of the trustees instead of to a majority of two-thirds.

as shall be requisite for carrying any such sale, exchange, partition, mortgage, lease, or disposition into legal effect, and all such acts, deeds, contracts, or assurances shall have the same legal effect as if the same were respectively done, entered into, or executed by all the acting trustees for the time being, and by the said official trustee. 23 & 24 Vict. c. 136, s. 16.

17. No official trustee of charitable funds, appointed under or in pursuance of the first or secondly recited act, shall be chargeable with or accountable for any loss or misapplication of the said charitable funds, or the dividends, interest, or income thereof, unless the same shall have been occasioned by or through his own wilful neglect or default. Official trustee not to be accountable for loss unless occasioned by his own neglect.

18. The official trustees of charitable funds shall lay before parliament annually, on or before the fourteenth day of February, or as soon as practicable after parliament shall be sitting, an account of the total amount of the capital stock, shares and securities transferred to them in the year ending the thirty-first day of December preceding, and of the total amount of monies, other than dividends or interest, paid to them or to their account during the same period, and of the investment thereof, and of the capital stock, shares, and securities sold or re-transferred by them during the same period, and of the aggregate amount of the capital stock, shares, funds, and securities, and the balance of cash, held by them on such preceding thirty-first day of December. Accounts to be laid before parliament.

19. The board may require any person having the custody or control of any deed or document in which any charity or charities shall be solely interested to transmit the same to the office of the said commissioners for exami- Power to require the transmission of documents belonging to charities.

23 & 24 Vict. c. 136, s. 19.

nation; and where such deed or document shall not be held by any person entitled as a trustee or otherwise to the custody thereof, the board may either retain the same, for the security thereof, in the repository provided by them under the sixty-third section of "The Charitable Trusts Act, 1853," or, as they may think most advantageous to the charity, may thereupon, or at any time thereafter, return or issue the same to the trustees or persons acting in the administration of the charity, for the purposes thereof.

Orders to be enforceable as under former acts.

20. All orders made by the said board under the provisions of this act shall be enforceable by the same means, and shall be subject to the same provisions, as are applicable under "The Charitable Trusts Act, 1853," and "The Charitable Trusts Amendment Act, 1855," respectively, to any orders of the said board made thereunder (*k*).

Board to make minutes.

21. The said board shall from time to time make such minutes as shall be required relative to the institution and conduct of their proceedings under the jurisdiction created by this act.

Salary of the secretary.

22. There shall be paid to the secretary for the time being of the said commissioners, in consideration of the increase and extent of his official duties, such a salary, not exceeding the annual sum of eight hundred pounds, in lieu of the salary payable to him under the firstly cited act, as shall from time to time be allowed by the commissioners of her Majesty's Treasury.

Indemnity to the Bank of

23. Every order made under this act under which any

(*k*) Cf. Charitable Trusts Act, 1853 (16 & 17 Vict. c. 137), s. 14, and the Charitable Trusts Amendment Act (18 & 19 Vict. c. 124), s. 9, *ante*, pp. 96, 178.

stock, shares, securities, or monies shall be transferred or paid to or deposited with the trustees of any charity, or the official trustees of charitable funds, shall afford a complete indemnity to the governor and company of the Bank of England, and to all companies and persons by whom respectively any such transfer, payment, or deposit shall be permitted or made, for permitting or making the same, and the said governor and company and other companies and persons shall be required to give effect or to conform to such order, and it shall not be necessary for them to inquire concerning the propriety of the same order, or the jurisdiction under which the same shall purport to be made.

23 & 24 Vict. c. 136, s. 23.

England and others.

24 (*l*). Every commissioner, secretary, and inspector acting under or employed for the purposes of the said acts shall be exempt from serving on juries while he shall be so acting or employed.

Commissioners, &c. exempted from serving on juries.

25. This act may be cited for all purposes by the short title of "The Charitable Trusts Act, 1860."

Short title.

(*l*) Repealed by the Statute Law Revision Act, 1875.

ROMAN CATHOLIC CHARITIES ACT, 1860,

23 & 24 Vict. c. 134.

23 & 24 Vict. c. 134, s. 1.

An Act to amend the Law regarding Roman Catholic Charities. [28th August, 1860.]

Whereas it is expedient that the laws concerning charities relating to or connected with the Roman Catholic religion in England or Wales should be amended in the particulars hereinafter provided for; be it enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present Parliament assembled, and by the authority of the same, as follows:

Charities for lawful purposes not to be invalidated by the addition of unlawful trust, but the property may be apportioned and the whole applied to lawful purposes.

1. No existing or future gift or disposition of real or personal estate upon any lawful charitable trust for the exclusive benefit of persons professing the Roman Catholic religion, shall be invalidated by reason only that the same estate has been or shall be also subjected to any trust or provision deemed to be superstitious, or otherwise prohibited by the laws affecting persons professing the same religion, but in every such case it shall be lawful for the [High Court of Chancery] (*a*) or any judge thereof sitting at Chambers, in exercise of the jurisdiction created by the Charitable Trusts Act, 1853, upon the application of her

(*a*) Now the Chancery Division of the High Court of Justice.

Majesty's Attorney General, or of any person authorized for this purpose by the certificate of the Board of Charity Commissioners for England and Wales, or for the said Board, upon the application of the person or persons acting in the administration of such real or personal estate, or of a majority of such persons, to apportion the same estate, or the annual income or benefit thereof, so that a proportion thereof, to be fixed by such court or judge, or by the said board, as the case may require, may be exclusively subject to the lawful charitable trusts declared by the donor or settlor, and that the residue thereof may become subject to such lawful charitable trusts for the benefit of persons professing the Roman Catholic religion, to take effect in lieu of such superstitious or prohibited trusts as the said court or judge, or the said board, may consider under the circumstances to be most just; and also that it shall be lawful for the court or judge, or board, making any such apportionment by the same or any other order or orders to establish any scheme for giving effect thereto, and to appoint trustees for the administration of the several portions of such real and personal estate, according to the trusts established of the same proportions respectively, and to vest the estate to be so apportioned in the trustees so to be appointed (*b*). 23 & 24 Vict. c. 134, s. 1.

2. No proceedings at law or in equity shall be brought or instituted on account or in respect of any dealings, transactions, matters or things, with or concerning any real or personal estate subject to any use, trust, gift, foundation or disposition for any charity relating to or connected with the Roman Catholic religion which took place prior to the passing of the act of the second and third years No proceedings to be instituted as to dealings with Roman Catholic charities prior to 2 & 3 Will. IV. c. 115.

(*b*) On the doctrine of Superstitious Uses, see Introduction, Part III., *ante*, p. 41.

23 & 24 Vict. c. 134, s. 2.

of the reign of king William the fourth, chapter one hundred and fifteen (*r*): provided that nothing herein contained shall extend to sanction or exempt from such proceedings as aforesaid the fraudulent misapplication or conversion of any such real or personal estate to any private use or purpose not being charitable.

Certain deeds for Roman Catholic charities not to be void if enrolled within twelve months from passing of act.

9 Geo. II. c. 36.

3. No deed or other assurance for any charity relating to or connected with the Roman Catholic religion made subsequently to the passing of the act passed in the ninth year of the reign of king George the second, intituled "An Act to restrain the disposition of Lands, whereby the same become inalienable," and before the passing of this act, shall be void or voidable by reason of the same not having been made, perfected or enrolled in the manner directed by the first-named act or otherwise, under the provisions of the said act, if such deed or assurance has been or shall be, within twelve months after the passing of this act, enrolled in the High Court of Chancery; provided that every deed or assurance for any such charity as aforesaid coming within the provisions of the act passed in the ninth year of the reign of king George the fourth, intituled "An Act for remedying a defect in the titles of Lands purchased for Charitable purposes," shall have the benefit thereof, notwithstanding anything herein contained.

9 Geo. IV. c. 85.

Expense of enrolment, how to be defrayed.

4. The expense of the enrolment of any deed under the third section of this act shall be defrayed out of the property subject to the charity to which the same may relate.

The trusts of charities in the absence of settlements may be ascer-

5. Where any real or personal estate subject to any use, trust, gift, foundation or disposition, for any charity relating to or connected with the Roman Catholic religion,

(*r*) The Roman Catholic Charities Act, 1832; see *ante*, p. 40, n.

shall have been applied upon any charitable trusts relating to or connected with the same religion during any continuous period of twenty years, but the original trusts of such property shall not be ascertained by means of any written document, the consistent usage of the last preceding twenty years, or of the last period of twenty years during which any consistent usage in the application of such property shall have prevailed, shall be deemed to afford conclusive evidence of the trusts on which the same property shall have been settled.

23 & 24 Vict. c. 134, s. 5.

tained from the usage.

6. Nothing in this act contained shall extend to give effect to any use, trust, gift, foundation or disposition heretofore made, which has been already avoided in any proceeding at law or in equity, or to prejudice any suit at law or in equity commenced before the passing of this act, or to affect any property held or enjoyed beneficially by any person or persons at the time of the passing of this act adversely to any such use, trust, gift, foundation or disposition.

The act not to prejudice past or pending proceedings or adverse possession.

7. Nothing in this act contained shall be taken to repeal or in any way alter any provisions of an act passed in the tenth year of his late majesty king George the fourth, intituled An act for the relief of his majesty's Roman Catholic subjects, respecting the suppression or prohibition of the religious orders or societies of the church of Rome bound by monastic or religious vows.

Nothing in this act to repeal provisions of 10 Geo. IV. c. 7.

8. In the construction of this act, except where the context or other provisions of this act shall require a different construction, the expression "charity" herein contained shall be construed to mean and include the same

Interpretation of charity.

23 & 24 Vict. c. 134, s. 8.

matters and things as the like expression means and includes in the "Charitable Trusts Act, 1853."

Short title.

9. This act may for all purposes be cited as "The Roman Catholic Charities Act."

Extent of act.

10. This act shall be confined in its operation to England and Wales.

CHARITABLE TRUSTS ACT, 1862.

25 & 26 VICT. c. 112.

An Act for establishing the Jurisdiction of the Charity Commissioners in certain Cases.

[7th August, 1862.]

WHEREAS by the acts relating to the Charity Commissioners for England and Wales authority has been given to the commissioners to make orders for various purposes in charity cases upon summary application, and particularly in relation to the appointment and removal of trustees, and the sale, exchange, leasing, and improvement of the property of charities: and whereas in various private acts of parliament and decrees and orders of the High Court of Chancery relating to charities such powers and authorities are often given or reserved, with directions that the same shall be exercised by the said court, or with its sanction or approbation, and doubts are entertained whether in such cases the authority given to the charity commissioners can be validly exercised: Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:— 25 & 26 Vict. c. 112, s. 1.

1. No provision contained in any such act of parliament or decree or order as aforesaid for the appointment or No provision in any Act of Parliament,

25 & 26 Vict. c. 112, s. 1.

or decree relating to any charity under any order of the Court of Chancery, to exclude any jurisdiction which might otherwise be exercised by the Charity Commissioners.

removal of trustees of any charity, or for or relating to the sale, exchange, leasing, disposal, or improvement of any property, by or under the order or with the approval of the Court of Chancery, shall (in the absence of any express direction to the contrary, to be contained in any future act of parliament, order, or decree) exclude or impair any jurisdiction or authority which might otherwise be properly exercised for the like purposes by the Charity Commissioners for England and Wales (*a*).

(*a*) The same will also apply to private Acts of Parliament, and to decrees and orders of the High Court relating to charities, by which powers and authorities may be given or reserved, with directions that the same shall be exercised by the Chancery Division of the High Court. See Supreme Court of Judicature Act, 1873, s. 16.

THE CHARITABLE TRUSTS ACT, 1869.

32 & 33 VICT. c. 110.

An Act for amending the Charitable Trusts Acts.

[11th August, 1869.]

WHEREAS doubts have arisen respecting the construction of some provisions of the Charitable Trusts Acts, and it is expedient to remove such doubts and otherwise to amend those acts: 32 & 33 Vict. c. 110, s. 1.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same as follows:—

Preliminary.

1. This act may be cited as "The Charitable Trusts Act, 1869." Short title.

2. This act shall not extend to Scotland or Ireland. Extent of act.

3. This act, so far as is consistent with the tenor thereof, shall be construed as one with the Charitable Trusts Act, 1853, the Charitable Trusts Amendment Act, 1855, and the Charitable Trusts Act, 1860, and the act of the session of the twenty-fifth and twenty-sixth years of the reign of her present Majesty, chapter one hundred and Act to be construed with 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 23 & 24 Vict. c. 136; 25 & 26 Vict. c. 112.

32 & 33 Vict. c. 110, s. 3.

twelve, "for establishing the jurisdiction of the charity commissioners in certain cases" (which may be cited as the Charitable Trusts Act, 1862), and those acts, together with this act, may be cited as the Charitable Trusts Acts, 1853 to 1869.

Amendment of sect. 3 of 23 & 24 Vict. c. 136.

4. A notice under section three of the Charitable Trusts Act, 1860, need not be sent by the Board of Charity Commissioners for England and Wales to any trustee or administrator of a charity who has been party or privy to the application to the board upon which they exercise their jurisdiction.

Mode of application to board.

5. An application to the Board of Charity Commissioners for England and Wales, for the purposes of the Charitable Trusts Acts, 1853 to 1869, when made by the trustees or persons acting in the administration of the charity, may be made in writing signed by any person authorized in that behalf by a resolution passed by a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question (*a*).

Powers of board on application.

6. The board shall be deemed to have and to have always had power in any order made upon an application to them, for the exercise of their jurisdiction under the Charitable Trusts Acts, 1853 to 1869, to insert in the order any incidental provisions which they think expedient for carrying into effect the substantial objects of the application, and which they would have had power to insert if such provisions had been included in the application.

(*a*) This amends sect. 4 of the Charitable Trusts Act, 1860.

32 & 33 Vict. c. 110, s. 7.

Notice of order.

23 & 24 Vict. c. 136, s. 6.

7. Nothing in the Charitable Trusts Acts, 1853 to 1869, shall be deemed to require or to have required the board, upon modifying a proposed order in manner provided by section six of the Charitable Trusts Act, 1860, after the publication thereof, to give public notice of such modified order in the manner provided by that section with respect to the order originally proposed, unless they think further notice desirable.

Discharge of order of board for irregularity.

8. The board shall be deemed to have and to have always had power with or without any application to discharge, within twelve months after an order is made by them, the whole or any part of any order appearing to have been made by them by mistake or on misrepresentation, or otherwise than in conformity with the Charitable Trusts Acts, 1853 to 1869.

Every order made by the board, in exercising their jurisdiction under the Charitable Trusts Acts, 1853 to 1869, shall, until discharged or varied by the board or by the Court of Chancery on appeal under section eight of the Charitable Trusts Act, 1860, have effect according to its tenor.

Every order of the board shall, subject to all powers which the Court of Chancery has to discharge or vary it, under section eight of the Charitable Trusts Act, 1860, and subject to the power of the board to discharge it wholly or partially for the causes mentioned in this section, be deemed to have been duly and formally made, and no objection thereto on the ground only of irregularity or informality shall be entertained.

Employment of persons to prepare and defend scheme.

9. The board, if they think it desirable, where the gross annual income of a charity is in their opinion sufficient to bear the expense, may, upon the application

32 & 33 Vict. c. 110, s. 9.

of the trustees or of any other person or persons entitled to apply to them in that behalf, employ or may authorize the trustees or persons acting in the administration of such charity to employ skilled and competent persons to prepare any scheme, order, statement, or other proceeding for the purposes of the Charitable Trusts Acts, 1853 to 1869, with respect to such charity, or to make or assist in any survey or local inquiry with reference thereto, and may order the costs incurred under this section or upon any inquiry by an inspector, or in consequence of the employment of any person to appear on behalf of the respondent upon any appeal against any scheme or order, to be provided in the same manner as if they were costs of a transaction mentioned in section thirty-six of the Charitable Trusts Act, 1855 (*b*).

Appeals under 23 & 24 Vict. c. 136.

10. A petition to the Court of Chancery under section eight of the Charitable Trusts Act, 1860, may be presented in the case of all charities by the same persons only as in the case of a charity the gross annual income of which does not exceed fifty pounds (*c*).

Service Attorney-General by appellant under sect. 8 of 23 & 24 Vict. c. 136.

11. A petition shall not be presented to the Court of Chancery by any person under section eight of the Charitable Trusts Act, 1860, before the expiration of twenty-one days after written notice under the hand of the appellant of his intention to present such petition has been served on the Attorney-General by delivering the

(*b*) *I. e.*, costs incurred in the carrying into effect by the trustees or persons administering the charity of orders of the board for the investment of money coming to any charity or the trustees thereof on any sale, exchange, or partition; such costs to be raised by the trustees out of the income or property of the charity.

(*c*) *I. e.*, by the Attorney-General or any person authorized by him or by the board.

same to the solicitor who acts for him in ex officio proceedings relating to charities. 32 & 33 Vict. c. 110, s. 11.

Legal power of majority of trustees to deal with charity estates.

12. Where the trustees or persons acting in the administration of any charity have power to determine on any sale, exchange, partition, mortgage, lease, or other disposition of any property of the charity, a majority of those trustees or persons who are present at a meeting of their body duly constituted and vote on the question shall have and be deemed to have always had full power to execute and do all such assurances, acts, and things as may be requisite for carrying any such sale, exchange, partition, mortgage, lease, or disposition into effect, and all such assurances, acts, and things shall have the same effect as if they were respectively executed and done by all such trustees or persons for the time being and by the official trustee of charity lands.

Legal proceedings by trustees of charities for protection of charity property, &c.

13. The majority of the trustees of any charity, if authorized by the board, may institute and maintain any action, suit, petition, or other proceeding in the same manner in all respects as if they were the sole trustees of the charity.

Where the trustees, or the majority of the trustees, of any charity, institute and maintain any action, suit, petition, or other proceeding under the authority of the board, such action, suit, petition, or other proceeding shall not abate or become discontinued or of no effect by reason of the death or removal from office of any of the trustees, or of the addition of any new trustee, but shall continue and have effect for and against the trustees for the time being of the charity, in the same manner as if they were actually named therein.

32 & 33 Vict. c. 110, s. 14.

Application by exempted charities to have benefit of act. See 16 & 17 Vict. c. 137, s. 63.

14. Either the trustees or the persons acting in the administration of any charity exempted from the operation of the Charitable Trusts Acts, 1853 to 1869, may apply to the board to have the said acts or any provisions thereof specified in the application extended to such charity: such application shall be made by such of the said trustees or persons as having regard to the value of the charity might under the provisions of the said acts, if the charity were not exempted therefrom, make an application for a scheme to any judge or court or to the board, and shall be made in the same manner and according to the same regulations as such application.

By sect. 43 of the principal act, applications to any judge or court under the jurisdiction created or enforced by any of the provisions of the act were to be made by H.M. Attorney General, or subject to the provisions of the act by all or any one or more of the trustees or persons administering or claiming to administer or interested in the charity which should be the object of such application, or any two or more inhabitants of any parish or place within which the charity is administered or applicable.

By sect. 28, where the income of the charity exceeds 30*l.*, "any person authorized in this behalf by the order or certificate of the board," or the Attorney General, may make application to the Master of the Rolls and Vice-Chancellors at Chambers, who shall have the same jurisdiction as the Court of Chancery or Lord Chancellor has upon information, &c.

By sect. 29, the same jurisdiction may be exercised by the Court of Chancery of the County Palatine of Lancaster in respect of charities within its jurisdiction whose gross annual income exceeds 30*l.*

By sect. 32, where the income of the charity does not exceed 30*l.*, District Courts of Bankruptcy and County Courts are to have similar jurisdiction.

By sect. 2 of "The Charitable Trusts Act, 1860," similar jurisdiction in both cases is given to the board.

By sect. 4 of the same act, the board is not to make any order under the jurisdiction vested in them by the act, with respect to any charity of which the gross annual income, exclusive of the yearly value of any buildings or land used wholly for the purposes thereof and not yielding any pecuniary income, shall amount to 50*l.* or upwards, except upon the application of the trustees or persons acting in the administration of the charity, or a majority of them, to be made to the board in writing under their hands if they are unincorporated, or under their common seal if they are incorporated.

32 & 33 Vict. c. 110, s. 14.

By sect. 11 of the same act, the jurisdiction of the District Courts of Bankruptcy and County Courts over charities not possessing a larger gross yearly income than 30*l.* is extended to charities of which the gross yearly income does not exceed 50*l.*

The trustees or persons who may apply to the board under this section to have the Charitable Trusts Acts or any provisions thereof extended to the charity in question will therefore be—

1. Where the gross yearly income of the charity amounts to 50*l.* or upwards, the trustees or persons acting in the administration of the charity, or a majority of them (who by sect. 4 of "The Charitable Trusts Act, 1860," are to make application to the board, in writing under their hands if unincorporated, or under their common seal if incorporated), and the Attorney General.

2. Where the gross yearly income of the charity does not amount to 50*l.*, any of the persons mentioned in sect. 43 of the principal act and the Attorney General.

On any such application the board may make an order directing that the said acts or any provisions of them specified in the application shall extend, and such acts or provisions shall thereupon after the date of the order extend to such charity in the same manner as if it were not exempted therefrom.

Before making any order under this section the board shall cause such notices of the proposed order to be given as by section three of the Charitable Trusts Act, 1860, as amended by this act (*d*), and by section six of the same act are required to be given before the making of an order for establishing a scheme.

Extension of part of acts to registered places of religious worship.

15. So much of the Charitable Trusts Acts, 1853 to 1869, as authorizes and relates to orders of the board for the appointment or removal of trustees of a charity, or for or relating to the vesting of any real or personal estate belonging thereto, or for the establishment of any scheme for the administration of any charity, shall extend to buildings registered as places of meeting for religious

(*d*) *I. e.*, by section 4.

32 & 33 Vict. c. 110, s. 15.

worship with the Registrar General of Births, Deaths, or Marriages in England, and *bonâ fide* used as places of meeting for religious worship: provided that no such order shall be made except upon the application of the trustees or persons acting in the administration of the charity, made in manner provided by section four of the Charitable Trusts Act, 1860, or by this act. Save as provided by this section, such buildings shall continue exempted from the Charitable Trusts Acts, 1853 to 1869.

Treasury to fix scale of fees.

16. The Lords Commissioners of Her Majesty's Treasury may from time to time prescribe a scale of fees to be charged for any business done by the board under this or any other act, and may direct whether the same shall be imposed by stamps or otherwise, and by whom and in what manner the same shall be collected, accounted for, and appropriated; and before any such fees shall be taken or received by the said Charity Commissioners every such scale of fees shall be published in the London Gazette.

Scale to be laid before Parliament.

The scale of fees shall be laid before both Houses of Parliament within thirty days after the same has been so prescribed if parliament is then sitting, and if not, within thirty days after the then next meeting of parliament; and if any such scale shall be disapproved of by both Houses of Parliament within one month after the same shall have been so laid before parliament, such fees or such parts thereof as shall be disapproved of shall not be charged by the board.

Repeal.

17. The enactments described in the schedule to this act are hereby repealed; provided that,

(1) This repeal shall not affect anything already done or suffered, or any right acquired or order made, under such enactments:

(2) Any proceedings already commenced under the enactments hereby repealed shall be proceeded with in the same manner as if this repeal had not been made. 32 & 33 Vict. c. 110, s. 17.

SCHEDULE.

Date.	Title.	
16 & 17 Vict. c. 137	An Act for the better administration of Charitable Trusts.	In part; namely, section sixty-three.
23 & 24 Vict. c. 136	An Act to amend the law relating to the administration of Endowed Charities.	In part; namely, section sixteen.

ENDOWED SCHOOLS ACT, 1869.

32 & 33 Vict. c. 56.

An Act to amend the Law relating to Endowed Schools and other Educational Endowments in England, and otherwise to provide for the Advancement of Education. [2nd August, 1869.]

32 & 33 Vict. c. 56.

Whereas the Commissioners appointed by her Majesty under letters patent dated the twenty-eighth day of December one thousand eight hundred and sixty-four, to inquire into the education given in schools not comprised within the scope of certain letters patent of her Majesty, bearing date respectively the thirtieth day of June one thousand eight hundred and fifty-eight and the eighteenth day of July one thousand eight hundred and sixty-one, have made their report, and thereby recommended various changes in the government, management, and studies of endowed schools, and in the application of educational endowments, with the object of promoting their greater efficiency, and of carrying into effect the main designs of the founders thereof, by putting a liberal education within the reach of children of all classes; and have further recommended other measures for the object of improving education:

And whereas such objects cannot be attained without the authority of Parliament:

Be it enacted by the Queen's most excellent Majesty,

by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same as follows: 32 & 33 Vict. c. 56, s. 1.

Preliminary.

1. This act may be cited as "The Endowed Schools Act, 1869." Short title.

2. This act shall not apply to Scotland or Ireland. Application of act.

3. This act shall come into operation on the passing thereof, which date is in this act referred to as the commencement of this act. Commencement of act.

4. In this act, unless the context otherwise requires, the term "endowment" means every description of property, real, personal, and mixed, which is dedicated to such charitable uses as are referred to in this act, in whomsoever such property may be vested, and in whosesoever name it may be standing, and whether such property is in possession or in reversion, or a thing in action. Definition of "endowment."

5. In this act, unless the context otherwise requires, the term "educational endowment" means an endowment or any part of an endowment which, or the income whereof, has been made applicable or is applied for the purposes of education at school of boys and girls or either of them, or of exhibitions tenable at a school or an university or elsewhere, whether the same has been made so applicable by the original instrument of foundation or by any subsequent Act of Parliament, letters patent, decree, scheme, order, instrument, or other authority, and whether it has been made applicable or is applied in the shape—of payment to the governing body of any school or any member thereof, Definition of "educational endowment."

32 & 33 Vict. c. 56, s. 5.

or to any teacher or officer of any school, or to any person bound to teach, or to scholars in any school, or their parents, or—of buildings, houses, or school apparatus for any school, or otherwise howsoever.

An endowment which has been made applicable to the purposes of education by a scheme and an order of the Court of Chancery is an "educational endowment" within the meaning of this section (*a*).

In regard to any educational endowment as defined by this section, it is not obligatory upon the Charity Commissioners, under "The City of London Parochial Charities Act, 1883," to prepare a scheme for it under that act (*b*).

The meaning of "educational endowment" in this section is not to be restricted, so as to allow the Commissioners under the act to deal only with certain schools and exhibitions or scholarships held at the universities in connection with such schools. The words are intended to apply to exhibitions held by persons who are sent to the universities to be educated, whether they are held in connection with a certain school or not (*c*).

Definition of "endowed school."

6. In this act, unless the context otherwise requires, the term "endowed school" means a school which is (or if it were not in abeyance would be) wholly or partly maintained by means of any endowment: Provided that a school belonging to any person or body corporate shall not by reason only that exhibitions are attached to such school be deemed to be an endowed school.

Interpretation of terms.

7. In this act, unless the context otherwise requires,—

The term "exhibition" means any exhibition, scholarship, or other like emolument; and the term "exhibitioners" and other terms referring to exhibitions are to be construed accordingly:

The term "governing body" means any body corporate,

(*a*) *Ross* v. *Charity Commissioners*, L. R. 7 App. Cas. 466; 51 L. J. N. S. P. C. 106; 47 L. T. N. S. 172; *Re Hemsworth Free Grammar School*, 56 L. T. N. S. 212.

(*b*) 46 & 47 Vict. c. 36, s. 33, *post*.

(*c*) *In re Meyricke Fund*, L. R. 7 Ch. 504; 20 W. R. 715; 41 L. J. N. S. Ch. 553; 26 L. T. N. S. 599.

persons or person who have the right of holding, or any power of government of or management over any endowment or, other than as master, over any endowed school, or have any power, other than as master, of appointing officers, teachers, exhibitioners or others, either in any endowed school, or with emoluments out of any endowment: 32 & 33 Vict. c. 56, s. 7.

The term "Committee of Council on Education" means the Lords of the Committee of her Majesty's Privy Council on Education.

8. Nothing in this act, save as in this act expressly provided, shall apply— Nothing in this act, except as expressly provided, to apply to certain schools herein named.

(1) To any school mentioned in section three of the Public Schools Act, 1868 (*d*), or to the endowment thereof:

(2) To any school which, on the first of January one thousand eight hundred and sixty-nine, was maintained wholly or partly out of annual voluntary subscriptions, and had no endowment except school buildings or teachers residences, or playground or gardens attached to such buildings or residences:

(3) To any school which, at the commencement of this act, is in receipt of an annual grant out of any sum of money appropriated by parliament to the civil service, intituled "For Public Education in Great Britain,"* or to the endowment thereof; unless such school is a grammar school, as defined by the act of the session of the third and fourth years of the reign of her present Majesty, chap-

(*d*) These are Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, Shrewsbury.

32 & 33 Vict. c. 56, s. 8.

ter seventy-seven,† or a school a department of which only is in receipt of such grant:

* By sect. 75 of "The Elementary Education Act, 1870" (*e*), "Where any school or any endowment of a school was excepted from 'The Endowed Schools Act, 1869,' on the ground that such school was, at the commencement of that act, in receipt of an annual parliamentary grant, the governing body (as defined by that act) (*f*) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment.

"The Education Department may approve such scheme with or without any modifications as they think fit.

"The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under 'The Endowed Schools Act, 1869;' and such scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that act.

"A certificate of the Education Department that a school was, at the commencement of 'The Endowed Schools Act, 1869,' in receipt of an annual parliamentary grant shall be conclusive evidence of that fact for all purposes."

† By sect. 25 of the act, 3 & 4 Vict. c. 77, "the words 'grammar school' shall mean and include all endowed schools, whether of royal or other foundation, founded, endowed or maintained for the purpose of teaching Latin and Greek or either of such languages, whether in the instrument of foundation or endowment, or in the statutes or decree of any court of record, or in any act of parliament establishing such school, or in any other evidences or documents, such instruction shall be expressly described, or shall be described by the word 'grammar,' or any other form of expression, which is or may be construed as intending Greek or Latin, or extended to both such languages, or to any other branch or branches of literature or science in addition to them or either of them;" and "the words 'grammar school' shall not include schools not endowed, but shall mean and include all endowed schools which may be grammar schools by reputation, and all other charitable institutions and trusts, so far as the same may be for the purpose of providing such instruction as aforesaid."

By sect. 24 the following institutions are exempted from the operation of the act: the Universities of Oxford and Cambridge and any college or hall within the same; the University of London and any colleges connected therewith; the University of Durham; the Colleges of St. David's and St. Bees; the Grammar Schools of Westminster, Eton, Winchester, Harrow, Charterhouse, Rugby, Merchant Taylors', St. Paul's, Christ's Hospital, Birmingham, Manchester, Macclesfield and Louth, and such schools as form part of any cathedral or collegiate church.

(*e*) 33 & 34 Vict. c. 75. (*f*) 32 & 33 Vict. c. 56, s. 7.

(4) To any school (unless it is otherwise subject to this act) which is maintained out of any endowment the income of which may, in the discretion of the governing body thereof, be wholly applied to other than educational purposes, or to such endowment: 32 & 33 Vict. c. 56, s. 8.

(5) To any school (unless it is otherwise subject to this act) which receives assistance out of any endowment the income of which may, in the discretion of the governing body of such endowment, be applied to some other school:

(6) To any endowment, applicable and applied solely for promoting the education of the ministers of any church or religious denomination, or for teaching any particular profession, or to any school (unless it is otherwise subject to this act) which receives assistance out of such endowment:

(7) To any school which, during the six months before the first of January one thousand eight hundred and sixty-nine, was used solely for the education of choristers, or to the endowment of any such school if applicable solely for such education.

Reorganization of Endowed Schools.

9. The Commissioners (appointed as in this act mentioned), by schemes made during the period, in the manner and subject to the provisions in this act mentioned, shall have power, in such manner as may render any educational endowment most conducive to the advancement of the education of boys and girls, or either of them, to alter, and add to any existing, and to make new trusts, directions and provisions in lieu of any existing, trusts, directions and provisions which affect such endowment, and the education promoted thereby, including the consolidation of two or Schemes for application of educational endowments.

32 & 33 Vict. c. 56, s. 9.

more such endowments, or the division of one endowment into two or more endowments.

It was held to be within the powers of the commissioners under this section to apply educational endowments, which had been confined to carrying on schools in a particular parish, in exhibitions for the benefit of a larger area of schools; and this being so, the way in which those powers had been exercised was not a proper subject of appeal under sect. 39 of this act (*g*).

Removals of site are within the powers conferred on the commissioners by this section (*h*).

Schemes as to governing bodies.

10. The Commissioners by any scheme relating to an educational endowment made during the period, in the manner and subject to the provisions in this act mentioned, shall have power to alter the constitution, rights, and powers of any governing body of an educational endowment, and to incorporate any such governing body, and to establish a new governing body, corporate or unincorporate, with such powers as they think fit, and to remove a governing body, and in the case of any corporation (whether a governing body or not) incorporated solely for the purpose of any endowment dealt with by such scheme, to dissolve such corporation.

Educational interests of persons entitled to privileges.

11. It shall be the duty of the Commissioners in every scheme which abolishes or modifies any privileges or educational advantages to which a particular class of persons are entitled, and that whether as inhabitants of a particular area or otherwise, to have due regard to the educational interests of such class of persons (*i*).

Where by the will of the foundress of an educational charity the benefits of the charity were open to children of three classes only, but in the scheme which the commissioners proposed nothing was said as to the admission of such children, and the governors of the charity were given

(*g*) *In the Matter of the St. Leonard, Shoreditch, Parochial Schools*, L. R. 10 App. Cas. 304; 33 W. R. 756; 54 L. J. N. S. P. C. 30; 51 L. T. N. S. 305.

(*h*) *Re Hemsworth Free Grammar School*, 56 L. T. N. S. 212.

(*i*) Extended by sect. 5 of the Endowed Schools Act, 1873, to "the educational interests of persons in a particular class in life."

powers sufficiently wide to enable them even to exclude such children, it was held on an appeal under sect. 39 of this act that the scheme must be remitted to the commissioners for amendment (*j*). It would be sufficient, however, if such children were made by the scheme admissible to the school as of right upon fair and equitable terms. 32 & 33 Vict. c. 56, s. 11.

This section, read in conjunction with sect. 5 of the Endowed Schools Act, 1873, was held to be sufficiently complied with in a scheme made by the Charity Commissioners under the Endowed Schools Acts, 1869 to 1874, for an endowment originally made applicable to educational purposes by an order of the Court of Chancery, although under the scheme of the Court of Chancery boys belonging to a particular parish were entitled to be admitted as day scholars for a sum not exceeding 2*l.* per year, and under the scheme of the Charity Commissioners a sum exceeding 2*l.* was imposed. It was enough that favour was still shown to the boys of such parish, where their parents were, in the opinion of the governors, in need of such aid (*k*).

Privileges which have been enjoyed by the permission or bounty of another for a longer or shorter period are not "privileges or educational advantages to which persons in a particular class of life are entitled" within the meaning of sect. 5 of the Endowed Schools Act, 1873, as incorporated with this section; the title to such advantages must have been given either by the original charter by which the charity was established, or by a scheme (*l*). Where by such scheme a title was shown by certain elementary schools to 644*l.* yearly out of the charity fund only, though 1,721*l.* more had been generally expended upon them, a scheme which took 15,000*l.* out of the fund for a grammar school, but left for the elementary schools more than 1,800*l.* yearly, was held not open to objection on the ground that the provisions of sect. 11 had not been carried out (*m*).

Schemes to extend benefit to girls.

12. In framing schemes under this act, provision shall be made so far as conveniently may be for extending to girls the benefits of endowments.

Saving of interest of foundationer, master, governing body, &c.

13. It shall be the duty of the Commissioners to provide in any scheme for saving or making due compensation for the following vested interests; namely,

(1) The interests of any boy or girl who was at the time

(*j*) *In re Hodgson's School*, L. R. 3 App. Cas. 857; 38 L. T. N. S. 790; cf. *Re Hemsworth Free Grammar School*, 56 L. T. N. S. 212.

(*k*) *Ross* v. *The Charity Commissioners*, L. R. 7 App. Cas. 468; 51 L. J. N. S. P. C. 109; 47 L. T. N. S. 174.

(*l*) *In re Sutton Coldfield Grammar School*, L. R. 7 App. Cas. 91; 30 W. R. 341; 51 L. J. N. S. P. C. 8; 45 L. T. N. S. 631.

(*m*) *Ibid.*

32 & 33 Vict. c. 56, s. 13.

of the passing of this act on the foundation of any endowed school:

(2) The tenure by any person of any exhibition dealt with by any such scheme which was held by him at the time of the passing of this act:

(3) Such interest as any teacher or officer in any endowed school appointed to his office before the passing of the Endowed Schools Act, 1868, may have:

Where a scheme for a school was framed by the commissioners under this act, the master of the school, who was by an earlier scheme liable to be removed from his office by the resolution of the governors present at a special meeting to be called for the express purpose of considering the expediency of such removal, and was also removable by the governors under the provisions of "The Charitable Trusts Act, 1853," was held nevertheless to have a vested interest within the meaning of this sub-section; and certain emoluments, to which by act of parliament he was entitled, not being preserved to him by the scheme, the scheme was ordered to be remitted to the commissioners (*n*). The sub-section does not attempt to define the terms of the tenure of the teacher or officer, whose interest is to be saved or compensated. "It would be very difficult for their lordships," said Lord Selborne, "having to look to substance and not to form or technicality in such a case, to accede to the argument that any teacher or officer of a school who had an interest, the value and nature of which was defined by act of parliament, and who had not been deprived of that interest by any lawful authority, would not be entitled *primâ facie* under that clause to have his interest saved or compensated" (*o*). The argument urged on behalf of the commissioners that the interest of the master was less than freehold and therefore not to be regarded as within the meaning of the clause failed, for the power of removal was carefully guarded by the Legislature so as to give to the master a very substantial vested interest until that power should be lawfully exercised, which it never had been (*p*). Where the master is not deprived of his mastership by the scheme, but continued in it, it is a case for the saving of his rights within the meaning of the section rather than for compensation (*q*).

(4) Such interest as any person may have in any pension or compensation allowance to which he was

(*n*) *In re Alleyn's College, Dulwich*, L. R. 1 App. Cas. 68; 45 L. J. N. S. P. C. 28.

(*o*) *Ibid.* L. R. 1 App. Cas. 76; 45 L. J. N. S. P. C. 30.

(*p*) *Ibid.* L. R. 1 App. Cas. 77; 45 L. J. N. S. P. C. 30.

(*q*) *Ibid.* L. R. 1 App. Cas. 81; 45 L. J. N. S. P. C. 32.

entitled at the passing of the Endowed Schools Act, 1868: 32 & 33 Vict. c. 56, s. 13.

(5) Such interest as any member of the governing body of any educational endowment appointed to his office before the passing of the Endowed Schools Act, 1868, may have in any emolument payable to him as such, or in any right of patronage which has a marketable value, and is capable of being sold by him:

It shall also be the duty of the Commissioners in any scheme relating to any endowed school to have regard to the rights of patronage which may be at the passing of this act exercised by any member of the governing body of such school in consequence of any gift or donation made by him.

14. Nothing in this act shall authorize the making of any scheme interfering— Not to authorize schemes for interfering with modern endowments, cathedral schools, &c.

(1.) with any endowment, or part of an endowment (as the case may be) originally given to charitable uses, or to such uses as are referred to in this act, less than fifty years before the commencement of this act, unless the governing body of such endowment assent to the scheme:

(2.) with the constitution of the governing body of any school wholly or partly maintained out of the endowment of any cathedral or collegiate church, or forming part of the foundation of any cathedral or collegiate church, unless the dean and chapter of such church assent to the scheme:

(3.) with the constitution of the governing body of any school, which governing body is subject to the jurisdiction of the governing body of the people called Quakers, or of the congregation of United

32 & 33 Vict. c. 56, s. 14.

Brethren called Moravians, unless the governing body of such school assent to the scheme:

(4.) with the constitution of the governing body of any school or with any exhibition (other than one restricted to any schools, or school or district) forming part of the foundation of any college in Oxford or Cambridge, unless the college assent to the scheme.

The words in sub-sect. (1), "originally given to charitable uses or to such uses as are referred to in this act, less than fifty years before the commencement of this act," refer only to the original foundation of the charity within that period, and do not apply to the case of an endowment made applicable to the purposes of education by a scheme and an order of the Court of Chancery (*r*).

Under the last sub-section, combined with sect. 5 of this act, an endowment of which the principal and fellows of a college were trustees, for exhibitioners to be selected from the six counties of North Wales, was held to be within the jurisdiction of the Endowed Schools Commissioners, who could call upon the head of the college, under the powers given them by sect. 49, to answer certain inquiries with reference to the endowment (*s*).

The "Old principality of Wales" may be a "district" within the meaning of this sub-section (*t*).

By sect. 39 of "The Universities of Oxford and Cambridge Act, 1877" (*u*), it is provided that, "If in any case the commissioners (*x*) contemplate making a statute for a college, affecting any right of preference in elections to any college emolument lawfully belonging to and enjoyed by any school, individually named and designated in any instrument of foundation, they shall, two months at least before adopting any final resolution in that behalf, give notice, by writing under their seal, to the governing body of the school, or to the master or principal of the school on behalf of the governing body, and to the Charity Commissioners.

"Where the emolument is not a fellowship, bye-fellowship, or student-

(*r*) *Ross* v. *Charity Commissioners*, L. R. 7 App. Cas. 463; 51 L. J. N. S. P. C. 106; 47 L. T. N. S. 172; see also note on sect. 5 of this act.

(*s*) *In re The Meyricke Fund*, L. R. 13 Eq. 279; 20 W. R. 258; 41 L. J. N. S. Ch. 187; 25 L. T. N. S. 787; affirmed on appeal, L. R. 7 Ch. 500; 20 W. R. 715; 41 L. J. N. S. Ch. 553; 26 L. T. N. S. 596.

(*t*) *Ibid.*

(*u*) 40 & 41 Vict. c. 48.

(*x*) *I. e.*, the University of Oxford Commissioners and the University of Cambridge Commissioners appointed under the act.

ship, the commissioners shall not make the proposed statute in either of the following cases, namely— 32 & 33 Vict. c. 56, s. 14.

(1.) If within two months after receipt of the notice aforesaid by the governing body, master, or principal of the school, two-thirds of the governing body of the school, or two-thirds of the aggregate body composed of the members of the several governing bodies of several schools interested (in the reckoning of the two-thirds members of the governing body of a school who are such by virtue of membership of or election by the governing body of the college not being counted), by writing under their respective hands or seal, dissent from the proposed statute on the ground that it would be prejudicial to the school or schools as a place or places of learning and education; or,

(2.) If within two months after receipt of the notice aforesaid by the Charity Commissioners, those commissioners, by writing under their seal, dissent from the proposed statute on the ground aforesaid.

"Where fellowships or studentships are tenable in a college by undergraduates, and the fellowships or studentships of the college are divided, or proposed to be divided, into elder and younger, the elder only shall be deemed to be fellowships or studentships within this section."

15. (*y*) In every scheme (except as hereafter mentioned) relating to any endowed school or educational endowment the Commissioners shall provide that the parent or guardian of, or person liable to maintain or having the actual custody of, any scholar attending such school as a day scholar, may claim, by notice in writing addressed to the principal teacher of such school the exemption of such scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, and that such scholar shall be exempted accordingly, and that a scholar shall not by reason of any exemption from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, be deprived of any advantage or emolument in such endowed school or out of any such endowment to which he would otherwise As to religious education in day schools.

(*y*) On sects. 15—19, see sect. 11 of the Endowed Schools Act, 1873, which requires a notice of one year, where alteration is made in the regulations respecting the religious instruction given at a school.

32 & 33 Vict. c. 56, s. 15.

have been entitled, except such as may by the scheme be expressly made dependent on the scholar learning such lessons.

They shall further provide that if any teacher, in the course of other lessons at which any such scholar is in accordance with the ordinary rules of such school present, teaches systematically and persistently any particular religious doctrine from the teaching of which any exemption has been claimed by such a notice as is in this section before provided, the governing body shall on complaint made in writing to them by the parent, guardian, or person having the actual custody of such scholar, hear the complainant, and inquire into the circumstances, and, if complaint is judged to be reasonable, make all proper provisions for remedying the matter complained of.

As to religious education in boarding schools.

16. In every scheme (except as hereinafter mentioned) relating to an endowed school the Commissioners shall provide that if the parent or guardian of, or person liable to maintain or having the actual custody of, any scholar who is about to attend such school, and who but for this section could only be admitted as a boarder, desires the exemption of such scholar from attending prayer or religious worship, or from any lesson or series of lessons on a religious subject, but the persons in charge of the boarding houses of such school are not willing to allow such exemption, then it shall be the duty of the governing body of such school to make proper provisions for enabling the scholar to attend the school and have such exemption as a day scholar, without being deprived of any advantage or emolument to which he would otherwise have been entitled, except such as may by the scheme be expressly made dependent on the scholar learning such lessons. And a like provision shall be made for a complaint by

such parent, guardian, or person as in the case of a day school. 32 & 33 Vict. c. 56, s. 16.

17. In every scheme (except as hereinafter mentioned) relating to any educational endowment the Commissioners shall provide that the religious opinions of any person, or his attendance or non-attendance at any particular form of religious worship, shall not in any way affect his qualification for being one of the governing body of such endowment (*z*). Governing body not to be disqualified on ground of religious opinions.

It was held by the Lords of the Committee of Council on Education, in their consideration of a scheme referred to them under the Endowed Schools Acts, 1869–1874, that in cases falling within this section the holder for the time being of an ecclesiastical office in the Church of England cannot lawfully be made an *ex officio* member of the governing body of an educational endowment. Particular religious opinions are implied in, and are necessary conditions of, the tenure of an ecclesiastical office, and must therefore "affect the qualification" which consists in the tenure of such an office (*a*). The meaning thus given to the word "affect" seems a very unnatural one; the more obvious interpretation of the section would be that no particular religious opinions should disqualify any person from being governor of an educational endowment.

18. In every scheme (except as hereinafter mentioned) relating to an endowed school the Commissioners shall provide that a person shall not be disqualified for being a master in such school by reason only of his not being or not intending to be in holy orders. Masters not to be required to be in holy orders.

19. A scheme relating to—

(1.) any school which is maintained out of the endow- Schools excepted from provisions as to religion.

(*z*) Amended by sect. 6 of the Endowed Schools Act, 1873, which provides that nothing in this section is to prevent the holder of a particular office from being retained on the governing body of an endowed school or educational endowment where he is a member of that body by the express terms of the original instrument of foundation.

(*a*) *In re Hodgson's School*, L. R. 3 App. Cas. 857; 38 L. T. N. S. 790.

32 & 33 Vict. c. 56, s. 19.

ment of any cathedral or collegiate church, or forms part of the foundation of any cathedral or collegiate church; or

(2.) any educational endowment, the scholars educated by which are, in the opinion of the Commissioners (subject to appeal to her Majesty in council as mentioned in this act), required by the express terms of the original instrument of foundation or of the statutes or regulations made by the founder or under his authority, in his lifetime or within fifty years after his death (which terms have been observed down to the commencement of this act), to learn or to be instructed according to the doctrines or formularies of any particular church, sect, or denomination,

is excepted from the foregoing provisions respecting religious instruction, and attendance at religious worship (other than the provisions for the exemption of day scholars from attending prayer or religious worship, or lessons on a religious subject, when such exemption has been claimed on their behalf), and respecting the qualification of the governing body and masters (unless the governing body, constituted as it would have been if no scheme under this act had been made, assents to such scheme) (*b*).

(*b*) Sub-sect. (2) is extended by sect. 7 of the Endowed Schools Act, 1873, to "any educational endowment originally given to charitable uses since the passing of the Toleration Act, if by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder, or under his authority in his lifetime, or within fifty years after his death (which terms have been observed down to the commencement of the principal act), it is required that the majority of members of the governing body, or that the majority of the persons electing the governing body of such endowment, or that the principal teacher employed in the school, or that the scholars educated by the endowment, shall be

And a scheme relating to any such school or endowment shall not, without the consent of the governing body thereof, make any provision respecting the religious instruction or attendance at religious worship of the scholars (except for securing such exemption as aforesaid), or respecting the religious opinions of the governing body or masters. 32 & 33 Vict. c. 56, s. 19.

Where an exemption is claimed under sub-sect. (2) of this section on the strength of regulations made under the authority of the founder within fifty years after his death, such regulations must generally have been in writing (*c*). Where the regulations relied upon were dated seventy years later than the date of the original foundation of the charity, the burden of proof that the regulations were made within fifty years after the death of the founders lies on those who wish to bring the case within the exemptions granted by the section (*c*). The burden of proof also lies on them to show that the regulations in question were made under the authority of the original founders, even if it can be shown that the regulations were made in their lifetime or within fifty years after their death; and the mere fact that the management of the charity was carried on by certain trustees is not enough to lead to an inference of law that they might at any time make rules impressing a new character, a more definitely denominational character than it had before, upon the foundation (*c*). Subscribers who merely add to an original endowment are not founders within the meaning of this section (*c*).

The appointment in a scheme of the rector of the parish in which the charity was situated as an *ex officio* governor of the charity is not a "provision respecting the religious opinions of the governing body" within the meaning of this section (*d*).

The object of the concluding part of sect. 19 was only to fortify the former part of the same section, and to prevent the commissioners from making particular religious opinions more or less necessary than they were before, to qualify, generally, for the office of governor (*d*). The school being a Church of England school, no religious opinions were implied in the office of rector of the parish except those which, independently of the scheme, would have been held by the Court of Chancery to be necessary to qualify for the office of governor or trustee (*e*).

It has been held that the words of the section apply only to the members of a particular church, sect or denomination."

(*c*) *In the Matter of the St. Leonard, Shoreditch, Parochial Schools*, L. R. 10 App. Cas. 304; 33 W. R. 756; 54 L. J. N. S. P. C. 30; 51 L. T. N. S. 305.

(*d*) *In re Hodgson's School*, L. R. 3 App. Cas. 857; 38 L. T. N. S. 790.

(*e*) *Ibid.* See also *The Ilminster School Case*, *Baker* v. *Lee*, 8 H. L. C. 495.

32 & 33 Vict. c. 56, s. 19.

original foundation by the founder or donor of the property for charitable uses, and to statutes and regulations made by him (or under his authority in his lifetime, or within fifty years after his death), and cannot be held to comprehend a scheme of the Court of Chancery appropriating to educational purposes property which had been already given for charitable uses (*f*).

The section does not apply where a scheme of the Court of Chancery has provided that religious instruction should be given only to those boys whose parents are willing, no matter what the founder's statutes may direct (*g*).

Transfer of jurisdiction of visitors.

20. In every scheme the Commissioners may, if they think fit, provide for the transfer to her Majesty of all rights and powers reserved to, belonging to, claimed by, or capable of being exercised by any person, persons, or body corporate as visitor of the endowed school or educational endowment to which the scheme relates, except in the case of cathedral schools.

They shall also provide that such rights and powers as aforesaid, if vested in her Majesty at the commencement of this act, or if transferred to her Majesty by the scheme, shall be exercised only through and by the Charity Commissioners for England and Wales.

Abolition of jurisdiction of ordinary as to licensing masters.

21. In every scheme the Commissioners shall provide for the abolition of all jurisdiction of the ordinary relating to the licensing of masters in any endowed school, or of any jurisdiction arising from such licensing.

Tenure of office of teachers.

22. In every scheme the Commissioners shall provide for the dismissal at pleasure of every teacher and officer in the endowed school to which the scheme relates, including the principal teacher, with or without a power of appeal in such cases and under such circumstances as to the Commissioners may seem expedient.

General provisions.

23. In any scheme the Commissioners may insert all

(*f*) *Ross* v. *The Charity Commissioners*, L. R. 7 App. Cas. 470; 51 L. J. N. S. P. C. 110; 47 L. T. N. S. 174.

(*g*) *Re Hemsworth Free Grammar School*, 56 L. T. N. S. 212.

powers and provisions that may be thought expedient for carrying its objects into effect. 32 & 33 Vict. c. 56, s. 23.

Clauses in a scheme made by the Endowed Schools Commissioners for an endowed school under the Endowed Schools Acts, 1869 to 1874, conferring on the Charity Commissioners visitatorial powers were held to be within the meaning of the words "all powers and provisions that may be thought expedient for carrying its objects into effect" (*h*).

Apportionment of mixed endowments.

24. Where part of an endowment is an educational endowment within the meaning of this act, and part of it is applicable or applied to other charitable uses, the scheme shall be in conformity with the following provisions (except so far as the governing body of such endowment assent to the scheme departing therefrom); that is to say:

(1.) The part of the endowment or annual income derived therefrom which is applicable to such other charitable uses shall not be diverted by the scheme from such uses;

Where a sum "for management" was included by the chancery scheme regulating a charity in the list of payments applicable to other than educational purposes, and was omitted from the income which, in the scheme made by the Charity Commissioners under the Endowed Schools Acts, 1869 to 1874, was assigned to the old trustees, it was held that such a provision involved no such want of conformity with this section as to justify an appeal under sub-s. (3) of s. 39. There was no diversion from charitable uses of any part of the money which was by the scheme of the Court of Chancery made applicable to such uses, but the old trustees being under the new scheme no longer the managers of the property, which was vested in the official trustee of charity lands, and was to be managed and administered by the governors appointed under the new scheme, a sum "for management" was not continued to trustees who were no longer managers (*i*).

(2.) The part of the endowment or annual income so applicable to such other charitable uses shall be

(*h*) *In re Hodgson's School*, L. R. 3 App. Cas. 857; 38 L. T. N. S. 790.

(*i*) *Ross* v. *Charity Commissioners*, L. R. 7 App. Cas. 470; 51 L. J. N. S. P. C. 110; 47 L. T. N. S. 175.

32 & 33 Vict. c. 56, s. 24.

deemed to be the proportion which, in the opinion of the Commissioners, subject to appeal to her Majesty in council, is the average proportion which has during the three years before the passing of this act been appropriated as regards capital or applied as regards income to such uses, or (if that proportion differs from the proportion which ought in accordance with the express directions of the instrument of foundation or the statutes or regulations during the said three years governing such endowment to have been so appropriated or applied) which ought to have been so appropriated or applied;

(3.) If the proportion applicable to other charitable uses exceeds one half of the whole of the endowment, the governing body of such endowment existing at the date of the scheme shall, so far as regards its non-educational purposes, remain unaltered by the scheme;

(4.) Where the governing body remains so unaltered, that body shall pay or apply for educational purposes such proportion as under the former provisions of this section is applicable to those purposes, or such less sum as may be fixed by the Commissioners, subject to appeal to her Majesty in council;

(5.) Where during the said three years any portion of the endowment as existing at the commencement of such three years, or the annual income of such portion, has been accumulated and not applied to any purpose, the Charity Commissioners for England and Wales shall determine whether such portion or income is to be considered, for the purposes of this section, as having been

appropriated or applied for educational purposes, or for other charitable uses; 32 & 33 Vict. c. 56, s. 24.

(6.) Where by reason of the act of parliament, letters patent, decree, scheme, order, or other instrument during the said three years governing an endowment not having during the said three years been duly carried into effect, or being merely provisional, the preceding provisions of this section are not in the opinion of the Charity Commissioners for England and Wales applicable to such endowment, the Charity Commissioners shall determine what proportions shall be considered as applicable to educational purposes, and such other charitable uses respectively.

Subject to the foregoing provisions of this section, the commissioners shall have power by any scheme to deal with such endowment, and with the governing body thereof, in the same manner in all respects as if the whole of it were an educational endowment.

New endowment mixed with old buildings, &c.

25. Where an endowment or part of an endowment originally given to charitable uses less than fifty years before the commencement of this act has, by reason of having been spent on school buildings or teachers residences, or playground or gardens attached to such buildings or residences, become so mixed with an old endowment given more than fifty years before the passing of this act, that in the opinion of the commissioners (subject to appeal to her Majesty in council) it cannot conveniently be separated from such old endowment, then the whole endowment shall for the purposes of this act be deemed to be an endowment originally given to charitable

32 & 33 Vict. c. 56, s. 25.

uses more than fifty years before the commencement of this act (*k*).

Apportionment of old and new endowments.

26. Where part of an endowment has been originally given to charitable uses more than fifty years, and another part less than fifty years before the commencement of this act, and the two have not become mixed, as mentioned in this act, so that they cannot conveniently be separated, and the governing body do not assent to the scheme dealing with the modern part of the endowment, the scheme relating to the old part of the endowment shall, subject to appeal to her Majesty in council, apportion such parts, and may direct either that the endowment shall be divided and appropriated accordingly in manner provided in the scheme, or that the whole endowment shall be vested in the governing body of one of such parts; and that the portion which is to be applied by the governing body of the other part shall be a debt due to them from the other governing body, and shall be a first charge on the endowment after payment of any charges existing thereon at the date of the scheme.

Claims of cathedral schools against Ecclesiastical Commissioners.

27. Where an educational endowment at the commencement of this act forms or has formed part of the endowment of any cathedral or collegiate church, the commissioners shall inquire into the adequacy of such educational endowment, and may submit to the Ecclesiastical Commissioners for England proposals for meeting out of the common fund of the Ecclesiastical Commissioners the claims of any school receiving assistance out of the endowment of any such church to have an increased provision made for it in respect of any estates of such church which may have

(*k*) Amended by sect. 8 of the Endowed Schools Act, 1873, *post*, p. 279.

been transferred to the Ecclesiastical Commissioners. And the Ecclesiastical Commissioners on assenting to any such proposal or any modification of it may make such provision out of their common fund by such means and in such manner as they think best, and a scheme under this act may with their consent be made for carrying such proposal into effect. 32 & 33 Vict. c. 56, s. 27.

28. In any scheme the commissioners may provide for the alteration from time to time of such portions of the scheme as they think expedient by the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction, provided such alteration shall not be contrary to anything contained in this act (*l*). As to alteration of schemes.

29. For the purposes of this act endowments attached to any school for the payment of apprenticeship fees or for the advancement in life or for the maintenance or clothing or otherwise for the benefit of children educated at such school shall be deemed to be educational endowments. Apprenticeship fees, &c.

Provided that nothing shall be construed to prevent a scheme relating to any such endowment from providing, if the governing body so desire, for the continued application of such endowment to the same purposes.

30. In the case of any endowment which is not an educational endowment as defined in this act, but the income of which is applicable wholly or partially to any one or more of the following purposes; namely:— Application to education of non-educational charities.

Doles in money or kind;

Marriage portions;

Redemption of prisoners and captives;

(*l*) Explained by sect. 10 of the Endowed Schools Act, 1873.

32 & 33 Vict. c. 56, s. 30.

Relief of poor prisoners for debt;
Loans;
Apprenticeship fees;
Advancement in life, or
Any purposes which have failed altogether or have become insignificant in comparison with the magnitude of the endowment, if originally given to charitable uses in or before the year of our Lord one thousand eight hundred;

it shall be lawful for the commissioners, with the consent of the governing body, to declare by a scheme under this act, that it is desirable to apply for the advancement of education the whole or any part of such endowment, and thereupon the same shall for the purposes of this act be deemed to be an educational endowment, and may be dealt with by the same scheme accordingly:

Provided that—

(1.) In any scheme relating to such endowment due regard shall be had to the educational interests of persons of the same class in life or resident within the same particular area as that of the persons who at the commencement of this act are benefited thereby:

(2.) No open space at the commencement of this act enjoyed or frequented by the public shall be inclosed in any other manner than it might have been if this act had not passed.

This section was never intended to prevent the Court of Chancery from exercising its jurisdiction to settle a scheme for the management of such a charity as is here mentioned, on a summons taken out by the Attorney-General under sect. 28 of the Charitable Trusts Act, 1853 (*m*), even though, as to a portion of the charities dealt with, a scheme had already been submitted by the governors to the Endowed Schools Commissioners under sect. 32, sub-s. (2), of this Act (*n*).

(*m*) *Ante*, p. 131.

(*n*) *In re Charitable Gifts for Prisoners, Ex parte the Governors of Christ's Hospital*, L. R. 8 Ch. 199;

The enlarged administration of charitable funds recognised by this section in the case of charities falling within it, agrees very closely with the wide extension given later to the *cyprès* doctrine by the *Campden Charities Case* (*o*), in which the Court of Appeal refused to interfere with a scheme made by the Charity Commissioners applying dole and apprenticeship charities that had increased enormously in value to purposes of education. No reference is made in that case to the present section, for though the powers of the Endowed Schools Commissioners had been already transferred to the Charity Commissioners, their scheme was made under the Charitable Trusts Acts and not under the powers hereby given.

32 & 33 Vict. c. 56, s. 30.

Procedure for making Schemes.

Appointment of commissioners for purposes of this act.

31. (*p*) [For the purposes of this act it shall be lawful for her Majesty from time to time to appoint commissioners (in this act referred to as "the commissioners"), and to appoint a secretary to such commissioners, and to remove any commissioners or secretary so appointed and appoint others, but the number of such commissioners shall not exceed three at any one time.

The commissioners of her Majesty's treasury may assign to the commissioners and secretary such salaries, and allow them to employ such assistant commissioners, officers, and clerks, as the commissioners of her Majesty's treasury may think proper.

The commissioners, secretary, and other persons so appointed and employed shall not hold office after the expiration of the time limited for the exercise of their powers.]

Preparation of draft scheme.

32. The commissioners, after such examination or public inquiry as they think necessary, may prepare drafts of

21 W. R. 213; 42 L. J. N. S. Ch. 391; 28 L. T. N. S. 84.

(*o*) L. R. 18 Ch. D. 310; 50 L. J. N. S. Ch. 646; 45 L. T. N. S. 152.

(*p*) Repealed by the Endowed Schools Act, 1874; the powers of the Endowed Schools Commissioners being transferred by sect. 1 of that act to the Charity Commissioners.

32 & 33 Vict. c. 56, s. 32.

schemes for the purposes of this act, [subject to the following conditions; namely,

(1.) Where the gross average annual income of an endowment or of the aggregate educational endowments of an endowed school during the three years next before the first of January one thousand eight hundred and sixty-nine,—

(a) exceeded ten thousand pounds a year, then before the expiration of twelve months, and where it—

(b) exceeded one thousand pounds a year, then before the expiration of six months,

after the commencement of this act, any governing body of any such endowment may, if they give to the commissioners such notice as in this section mentioned, prepare and submit to the commissioners in writing a scheme relating to such endowment, and the commissioners shall consider such scheme before they themselves prepare any draft of a scheme relating to the same endowment: and any scheme so prepared by the governing body, and submitted to the commissioners, shall, if approved by them, be adopted and proceeded with by them in the same manner as if it were a draft scheme originally prepared by themselves:

(2.) The notice to be given by a governing body to the commissioners is a notice of their intention to prepare and submit to the commissioners a draft of a scheme, which notice shall be in writing, and shall be given to the commissioners within two months after the commencement of this act:

(3.) The certificate of the Charity Commissioners for England and Wales shall be conclusive evi-

dence for the purposes of this section of the income of an endowment or aggregate endowments of an endowed school] (*q*). 32 & 33 Vict. c. 56, s. 32.

33. When the commissioners have prepared the draft of a scheme they shall cause it to be printed, and printed copies of it to be sent to the governing body or governing bodies of the endowment or endowments to which it relates, and to the principal teacher of any endowed school to which it relates, and shall also cause the draft, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all persons interested. As to printing and publication of draft schemes.

34. During [three] (*r*) months after the first publication of the draft of a scheme the commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall receive any alternative scheme submitted to them by the governing body of any endowment to which the scheme of the commissioners relates. Objections and suggestions respecting scheme and alternative scheme.

35. At any time after the expiration of the [three] (*r*) months the commissioners, or any one of them, if they think fit, may hold an inquiry or they may refer the draft of the scheme and the alternative scheme, if any, to an assistant commissioner, and direct him to hold an inquiry concerning the subject-matter of such scheme or schemes. Power to make inquiry into schemes.

36. As soon as may be after the expiration of the said [three] (*r*) months, or the holding of such inquiry by the As to framing of schemes.

(*q*) These conditions are now, of course, long out of date.

(*r*) The Endowed Schools Act, 1873, s. 12, *post*, p. 282, substitutes "two."

32 & 33 Vict. c. 56, s. 36.

commissioners or one of them, or the receipt by the commissioners of the report of the assistant commissioner, on the inquiry held by him (as the case may be), the commissioners shall proceed to consider any objections or suggestions made to them in writing respecting the draft scheme, and to consider the alternative scheme (if any), and the report (if any), and thereupon they shall, if they think fit, frame a scheme in such form as they think expedient, and submit it for the approval of the Committee of Council on Education: Provided that where a scheme has been prepared and submitted in pursuance of this act to the commissioners before the commissioners have prepared the draft of a scheme the commissioners shall, if requested by the governing body which submitted it, submit such scheme with their own to the Committee of Council on Education.

Approval of Committee of Council on Education to schemes.

37. [The Committee of Council on Education shall consider all schemes so submitted to them, and may, if they think fit, approve any scheme so submitted, and shall cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested] (*s*).

If the committee do not approve a scheme submitted to them the commissioners may frame and submit another scheme in the same manner as if no scheme had been previously framed and submitted; provided that where the Committee of Council on Education have not approved any scheme relating to an endowment, the governing body of which may under this act prepare and submit a draft of a scheme before the commissioners prepare a draft of a scheme, such governing body may, within three months

(*s*) Repealed by the Endowed Schools Act, 1873, *post*, p. 288.

after notice of such non-approval (if within one month thereafter they give written notice of their intention to the commissioners), submit to the commissioners an amended scheme; and the commissioners shall consider the same before they frame and submit another scheme relating to the same endowment, and such amended scheme of the governing body, if approved by the commissioners, shall be adopted and proceeded with by them as if it were a scheme originally framed by themselves (*t*). 32 & 33 Vict. c. 56, s. 37.

38. Where a scheme abolishes any restriction which makes any exhibition tenable only at a particular college or hall in any university, and the exhibition is payable out of property held by such college, or by the university in trust for such college or hall (otherwise than as governing body of a school, or as a bare trustee), the scheme shall not be approved if not less than two thirds of the governing body of such college or hall dissent therefrom in writing; but in every such case the Committee of Council shall make a special report to Parliament setting out the proposed scheme, and stating the dissent, and the reasons, if any, assigned for it. Consent of colleges or hall.

39. If the governing body of any endowment to which a scheme relates, or any person or body corporate directly affected by such scheme, feels aggrieved by the scheme, on the ground— Appeal to Queen in council.

(1.) Of any decision of the commissioners in a matter in which an appeal to her Majesty in council is given by this act; or

(2.) Of the scheme not saving or making due compensation for his or their vested interest as required by this act;

(*t*) Amended by sect. 13 of the Endowed Schools Act, 1873.

32 & 33 Vict. c. 56, s. 39.

(3.) Of the scheme being one which is not within the scope of or made in conformity with this act; or

(4.) (If the governing body are the petitioners) of a scheme not having due regard to any educational interests, to which regard is required by this act to be had, on the abolition or modification of any privileges or educational advantages to which a particular class of persons are entitled;

such governing body, person, or body corporate may within two months after the publication of the scheme when approved petition her Majesty in council stating the grounds of the petition, and praying her Majesty to withhold her approval from the whole or any part of the scheme.

[Her Majesty, by order in council, may refer any such petition for the consideration and advice of five members at the least of her privy council, of whom two (not including the Lord President) shall be members of the Judicial Committee, and such five members may, if they think fit, admit counsel to be heard in support of and against the petition, and shall have the same power with respect to the cost of all parties to the petition as the Court of Chancery would have if the petition were a proceeding in that court by way either of petition or information for obtaining a scheme] (*u*).

Any petition not proceeded with in accordance with the regulations made with respect to petitions presented to the Judicial Committee of the Privy Council shall be deemed to be withdrawn.

It shall be lawful for her Majesty by order in council to direct that the scheme petitioned against be laid before

(*u*) Repealed by the Endowed Schools Act, 1873.

parliament, or to remit it to the commissioners with such declaration as the nature of the case may require (*x*). 32 & 33 Vict. c. 56, s. 39.

This section allows four grounds of appeal; in the case of three of these the appeal must be made by the governing body of the endowment, or by any person or body corporate directly affected by the scheme; on the fourth ground appeal must be by the governing body. Under these circumstances it has been held that the ground of appeal, where appeal is made to the Queen in council under this section, must be stated in the petition, and it must appear on the face of the petition that the petitioner appeals on one or other of the four grounds expressly recognized by the section (*y*). Where the petitioners described themselves as "the undersigned inhabitants and ratepayers of the chapelry of Haydon and Woodshields," and the only ground of objection to the scheme proposed was that by the founder's deed the petitioners had a right, and that all inhabitants and ratepayers of the chapelry had a right, to have their children taught free of expense at the school with which the scheme proposed to deal, which right would, it was alleged, be taken away by the scheme, it was held that such a right did not come within the category of vested interests as enumerated in sect. 13 of the act; it could not be brought within the meaning of the words of sub-s. (1), "the interests of any boy or girl who was at the time of the passing of the act on the foundation of any endowed school," and it was obviously not within the words of any of the other sub-sections of sect. 13. It was therefore impossible that the case could fall under sub-s. (2) of sect. 39. It could not fall under sub-s. (1) of that section, for it was not a matter in which an appeal to her Majesty in council was expressly given by the act; nor could it fall within sub-s. (3), for a petitioner under that sub-section must show that he is himself directly affected by that of which he complains, and the loss of the opportunity of sending their children free of charge to the school affected each of the petitioners indirectly and contingently only. Neither could it fall under sub-s. (4), for in that case the governing body alone could be the petitioners. The petition was therefore dismissed (*z*).

Where a scheme was expressed to be made without prejudice to a future scheme to be passed in accordance with the Endowed Schools Acts, the provision was held to be mere surplusage, and only expressed that which the act of parliament had already enacted—that a future scheme might

(*x*) Amended by sect. 14 of the Endowed Schools Act, 1873.

(*y*) *Re Shaftoe's Charity at Haydon Bridge*, L. R. 3 App. Cas. 872; 38 L. T. N. S. 793.

(*z*) Per Lord Selborne in *Re Shaftoe's Charity at Haydon Bridge*, L. R. 3 App. Cas. 872; 38 L. T. N. S. 793; see also *In re Sutton Coldfield Grammar School*, L. R. 7 App. Cas. 91; 30 W. R. 341; 51 L. J. N. S. P. C. 8; 45 L. T. N. S. 631, where the decision in the earlier case that "inhabitants" had no *locus standi* as such was upheld.

32 & 33 Vict. c. 56, s. 39.

be made. Such a provision, therefore, did not make the scheme less final than it was required to be by the act, or prevent its being within the scope of the act (*a*).

Proceedings where scheme is remitted.

40. Where a scheme is remitted with a declaration the commissioners may either proceed to prepare another scheme in the matter in the same manner as if no scheme had been previously prepared, or may submit for the approval of the Committee of Council on Education such amendments in the scheme as will bring it into conformity with the declaration.

The committee may, if they think fit, approve the scheme with such amendments, and shall publish and circulate the same in the same manner and subject to the same right of petition to her Majesty in council as is before directed in the case of the approval of a scheme, and so on from time to time as often as occasion may require.

Schemes, &c. to be laid before Parliament.

41. After the time has expired for a petition to her Majesty in council against any scheme, or after her Majesty in council has directed a scheme to be laid before parliament, the scheme shall be forthwith laid before both Houses of Parliament, if parliament be sitting, or if not, then within three weeks after the beginning of the next ensuing session of parliament, and after such scheme has lain for forty days before parliament, then unless within such forty days an address has been presented by one or other of the said houses praying her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for her Majesty by order in council to declare her approbation of such scheme or any part thereof to which such address does not relate (*b*).

(*a*) *In re Sutton Coldfield Grammar School*, L. R. 7 App. Cas. 93.

(*b*) Repealed by the Endowed Schools Act, 1873, except as re-

42. Where a scheme relates to an endowment which during the three years preceding the commencement of this act has had an average annual gross income of not more than one hundred pounds, no petition shall be presented to her Majesty in council with reference to such scheme, so far as it relates to such an endowment.

32 & 33 Vict. c. 56, s. 42.

Exception as to schemes for endowments under 100*l.*

The certificate of the Charity Commissioners for England and Wales shall be conclusive evidence for the purposes of this section of the income of an endowment.

43. If any scheme or any part thereof is not approved by her Majesty, then the commissioners may thereupon proceed to prepare another scheme in the matter, and so on from time to time as often as occasion may require.

New scheme on non-approval.

44. Schemes may be from time to time framed and approved for amending any scheme approved under this act, and all the provisions of this act relative to an original scheme shall apply also to an amending scheme, mutatis mutandis.

Amendment of schemes.

45. A scheme shall not of itself have any operation, but the same, when and as approved by her Majesty in council, shall from the date specified in the scheme, or, if no date is specified, from the date of the order in council, have full operation and effect in the same manner as if it had been enacted in this act.

Scheme to take effect.

gards schemes which had lain for forty days before parliament before the commencement of that act; sect. 15 of the Act of 1873 being substituted for it, the result of which is to dispense with the laying of a scheme before parliament except where a petition is presented, and where a petition has been presented, to substitute two months for forty days as the time during which the scheme shall lie before parliament.

32 & 33 Vict. c. 56, s. 46.

Effect of scheme.

46. Upon a scheme coming into operation, every act of parliament, letters patent, statute, deed, instrument, trust, or direction relating to the subject-matter of the scheme, and expressed by such scheme to be repealed and abrogated, shall, by virtue of the scheme and of this act, be repealed and abrogated from the date in that behalf specified, or, if no date is specified, from the date of the scheme coming into operation, and all property purporting to be transferred by such scheme shall, without any other conveyance or act in the law (so far as may be), vest in the transferees, and so far as it cannot be so vested shall be held in trust for the transferees.

Evidence of scheme.

47. The order in council approving a scheme shall be conclusive evidence that such scheme was within the scope of and made in conformity with this act, and the validity of such scheme and order shall not be questioned in any legal proceedings whatever.

Quorum of commissioners.

48 (*c*). [A scheme of the commissioners shall not be submitted to the Committee of Council on Education unless two at least of the commissioners have signified in writing their approval of such scheme, but in all other respects one commissioner may act under this act.]

Power of commissioners, &c. as to procuring evidence. 18 & 19 Vict. c. 124, ss. 6—9.

49. Section eleven of "The Charitable Trusts Act, 1853" (which relates to the production of documents by public officers), and sections six, seven, eight, and nine of "The Charitable Trust Act, 1855" (relating to evidence, and the attendance and examination of witnesses), shall extend to the commissioners and assistant commissioners under this act, as if they were the commissioners and inspectors mentioned in those sections.

(*c*) Repealed by the Endowed Schools Act, 1874.

32 & 33 Vict. c. 56, s. 50.

Inquiry by public sittings by commissioners, &c.

50. Where any commissioner or assistant commissioner holds a local inquiry for the purpose of a scheme under this act, whether before or after the first publication of a draft scheme, he shall for that purpose hold a sitting or sittings in some convenient place in the neighbourhood of the place where the endowment is situate or administered, and thereat take and receive any evidence and information offered, and hear and inquire into any objections or suggestions made or to be made during the sitting or sittings respecting the scheme or the endowment or school, with power from time to time to adjourn any sitting.

Notice shall be published, in such manner as the commissioners direct, of every such sitting (except an adjourned sitting) fourteen days at least before the holding thereof.

As to report of assistant commissioners.

51. The assistant commissioner who holds a local inquiry shall make a report in writing to the commissioners setting forth the result of the inquiry, and where a draft scheme, with or without an alternative scheme, has been referred to him whether in his opinion such draft or alternative scheme, as the case may be, should be approved with or without alteration, and if with any, then with what alteration, and his reasons for the same, and the objections and suggestions, if any, made on the inquiry, and his opinion thereon.

Miscellaneous.

Restriction of powers of Charity Commissioners, court, &c.

52. [During the continuance of the power of making schemes under this act the Charity Commissioners for England and Wales, or any court or judge, shall not, with respect to any educational endowment which can be dealt with by a scheme under this act, make any scheme or appoint any new trustees without the consent of the Committee of Council on Education] (*d*).

(*d*) Repealed by the Endowed Schools Act, 1874.

32 & 33 Vict. c. 56, s. 52.

During the same period the Charity Commissioners shall have the same power of acting upon application made to them by the commissioners under this act with respect to any educational endowment as they would have if such application had been made by the governing body of such endowment; and the governing body shall conform to any order made or directions given by the Charity Commissioners upon such application.

School chapels appropriated for religious worship free from parochial jurisdiction.

53. The chapel of an endowed school subject to this act, which either has been before or after the commencement of this act consecrated according to law, or is authorized for the time being by the bishop of the diocese in which the chapel is situate, by writing under his hand, to be used as a chapel for such school, shall be deemed to be allowed by law for the performance of public worship and the administration of the sacraments according to the Liturgy of the Church of England, and shall be free from the jurisdiction and control of the incumbent of the parish in which such chapel is situate.

Quorum of governing body for acting under this act.

54. The majority of the members of a governing body who are present at a meeting of their body duly constituted shall have power to do anything that may be required to be done by a governing body for the purposes of this act: Provided that this power shall be in addition to and not in restraint of any power which any meeting of such governing body may have independently of this act.

Persons acquiring interest after passing of act to be subject to scheme.

55. Every interest, right, privilege, or preference, or increased interest, right, privilege, or preference, which any person may acquire after the passing of this act in or relative to any endowed school or educational endowment, or in the governing body thereof, or as member of any

such governing body, or in or relative to any mastership, office, place, employment, pension, compensation, allowance, exhibition, or emolument in the gift of any such governing body, shall be subject to the provisions of any scheme made under this act; and the governing body of an endowed school or educational endowment shall not, during the continuance of the power of making schemes under this act, begin to build, rebuild, or enlarge any school buildings or teachers' residences or buildings connected therewith, except with the written consent of the commissioners, or under the directions of such a scheme, but this provision shall not prevent them from continuing any works begun before the passing of this act, or from doing anything necessary for the repair or maintenance of buildings or residences existing at the passing of this act. 32 & 33 Vict. c. 56, s. 55.

56. Notices and documents required to be served on or sent to a governing body for the purposes of this act may be served or sent by being left at the office, if any, of such governing body, or being served on or sent to the chairman, secretary, clerk, or other officer of such governing body, or if there is no office, chairman, secretary, clerk, or officer, or none known to the commissioners (after reasonable inquiry), by being served on or sent to the principal teacher of the school (if any) under such governing body. Service of notices.

57. Notices and documents required to be served or sent for the purposes of this act may be served or sent by post, and shall be deemed to have been served and received at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notices or documents was properly addressed and put into the post office. Service by post.

33 & 33 Vict. c. 56, s. 58.

Expenses of act.

58. The salaries paid and expenses incurred in carrying into effect this act shall be defrayed out of monies to be provided by Parliament.

Duration of powers of making schemes.

59. The powers of making and approving of a scheme under this act shall not, unless continued by Parliament, be exercised after the thirty-first of December one thousand eight hundred and seventy-two, or such further day not later than the thirty-first of December one thousand eight hundred and seventy-three, as may be appointed by her Majesty in council (*e*).

(*e*) The time is extended by sect. 17 of the Endowed Schools Act, 1873, for the making and approving of schemes both under that act and under this to 31st December, 1874, for unopposed schemes, and to 15th August, 1874, for opposed schemes. The section is repealed by the Endowed Schools Act, 1874. By sect. 6 of the last-mentioned act the powers of making schemes under the Endowed Schools Acts are continued in the Charity Commissioners for a period of five years from 31st December, 1874; by the Endowed Schools Acts Continuance Act, 1879 (42 & 43 Vict. c. 66), they were again continued for a period of three years from the 31st December, 1879; and they have since been continued from year to year by the Expiring Laws Continuance Acts of 1882, 1883, 1884, 1885 and 1886.

ENDOWED SCHOOLS ACT, 1873.

36 & 37 VICT. c. 87.

An Act to continue and amend the Endowed Schools Act, 1869. [5th August, 1873.]

BE it enacted by the queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows: 36 & 37 Vict. c. 87, s. 1.

1. This act shall be construed as one with the Endowed Schools Act, 1869 (in this act referred to as the principal act), and the principal act and this act may be cited together as the Endowed Schools Acts, 1869 and 1873, and this act may be cited as the Endowed Schools Act, 1873. Construction of act and short title. 32 & 33 Vict. c. 56.

2. This act shall come into operation on the first day of September one thousand eight hundred and seventy-three, which day is in this act referred to as the commencement of this act. Commencement of act.

3. Where an endowed school, not being a grammar school as defined * by the act of the session of the third and fourth years of the reign of her present Majesty, chapter seventy-seven, or a department of such a grammar school, Exception of elementary schools from 32 & 33 Vict. c. 56, and application thereto of

36 & 37 Vict. c. 87, s. 3.

33 & 34 Vict. c. 75, s. 75.

is at the commencement of this act an elementary school within the meaning of the Elementary Education Act, 1870,† and the gross average annual income of the aggregate educational endowments of such school during the three years next before such commencement did not exceed one hundred pounds, in such case after the commencement of this act nothing in the principal act shall apply to such school or the endowments thereof, and section seventy-five of the Elementary Education Act, 1870,‡ shall apply to such school and the endowments thereof in like manner as if it were a school which, at the commencement of the principal act, was in receipt of an annual parliamentary grant, and schemes may accordingly be framed, submitted, and approved under the said section with reference to such school and endowments.

Provided, that nothing in this section shall prevent the commissioners from making, on the application of the governing body of an endowment of which part only is an educational endowment to which this section applies, a scheme dealing, in pursuance of the principal act, with the part of such endowment applicable or applied to other charitable uses, and in such case the scheme may deal with the endowed school and endowment thereof in like manner as if this section had not been enacted.

The governing body of every school to which this section applies may, if they think fit, charge such fees to the scholars as may from time to time be approved by the Committee of Council on Education, and shall permit the school to be inspected and the scholars therein to be examined by one of her Majesty's inspectors of schools at such times and in such manner as the Committee of Council on Education may from time to time direct.

The certificate of the Charity Commissioners for England and Wales that a school is or is not a school to which this

section applies shall be conclusive evidence of the fact for the purposes of the principal act and this section. 36 & 37 Vict. c. 87, s. 3.

* For the definition of Grammar School in 3 & 4 Vict. c. 77, see *ante*, p. 242.

† "Elementary school" is defined in sect. 3 of "The Elementary Education Act, 1870," as "a school or department of a school at which elementary education is the principal part of the education there given, and does not include any school or department of a school at which the ordinary payments in respect of the instruction, from each scholar, exceed ninepence a week."

‡ Sect. 75 of "The Elementary Education Act, 1870," is as follows:—"Where any school, or any endowment of a school, was excepted from 'The Endowed Schools Act, 1869,' on the ground that such school was, at the commencement of that act, in receipt of an annual parliamentary grant, the governing body (as defined by that act (*a*)) of such school or endowment may frame and submit to the Education Department a scheme respecting such school or endowment.

"The Education Department may approve such scheme, with or without any modifications, as they think fit.

"The same powers may be exercised by means of such scheme as may be exercised by means of any scheme under 'The Endowed Schools Act, 1869'; and such scheme, when approved by the Education Department, shall have effect as if it were a scheme made under that act.

"A certificate of the Education Department that a school was, at the commencement of 'The Endowed Schools Act, 1869,' in receipt of an annual parliamentary grant, shall be conclusive evidence of that fact for all purposes."

4. Where any endowment, or any right of holding or any power of government of or management over any endowment, or any power of appointing officers, teachers, exhibitioners, or others, either in any endowed school or with emoluments out of any endowment, is vested in her Majesty in right of her Crown or of the Duchy of Lancaster, the Endowed Schools Acts, 1869 and 1873, shall extend to such endowment, right, or powers; and the term "governing body" in those acts shall be deemed to include her Majesty: Extension of Endowed Schools Acts to endowments, &c. vested in her Majesty in right of the Crown or Duchy of Lancaster.

(*a*) *Ante*, p. 240.

36 & 37 Vict. c. 87, s. 4.

Provided that—

(1.) Any scheme with respect to such endowment, right, or power shall not be approved by the Committee of Council on Education unless her Majesty assent to such scheme:

(2.) All notices and documents required to be served on or sent to a governing body for the purposes of the Endowed Schools Acts, 1869 and 1873, may be served on or sent to the Lord Chancellor or the Chancellor of the Duchy of Lancaster, as the case may require:

(3.) With the consent of her Majesty, a scheme may deal with any such right or power without saving or making due compensation therefor:

(4.) Any assent or consent of her Majesty required for the purpose of the Endowed Schools Acts, 1869 and 1873, may be signified by her Majesty's Sign Manual, countersigned by the Lord Chancellor or by the Chancellor of the Duchy of Lancaster, as the case may require.

Amendment of 32 & 33 Vict. c. 56, s. 11.

5. It shall be the duty of the commissioners in every scheme to have the same regard to the educational interests of persons in a particular class in life as they are by section eleven of the principal act required to have to the educational interests of any particular class of persons (*b*).

Amendment of 32 & 33 Vict. c. 56, s. 17, as to holders of office being retained on governing body.

6. Where under the express terms of the original instrument of foundation of any endowed school or educational endowment the holder of any particular office is a member of the governing body of the school or endow-

(*b*) See notes on sect. 11 of the Endowed Schools Act, 1869, *ante*, p. 244.

ment, nothing in section seventeen of the principal act shall be deemed to prevent the holder for the time being of such office from being retained as a member of the governing body of such school or endowment. 36 & 37 Vict. c. 87, s. 6.

7. A scheme relating to any educational endowment originally given to charitable uses since the passing of the act of the first year of the reign of William and Mary, chapter eighteen (commonly called the Toleration Act (*c*)), if by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder, or under his authority in his lifetime, or within fifty years after his death (which terms have been observed down to the commencement of the principal act), it is required that the majority of the members of the governing body or that the majority of the persons electing the governing body of such endowment, or that the principal teacher employed in the school, or that the scholars educated by the endowment, shall be members of a particular church, sect, or denomination, shall be excepted from the provisions of the principal act mentioned in section nineteen of the principal act in like manner as a scheme mentioned in that section, and that section shall be construed as if a scheme relating to such an educational endowment as is above in this section mentioned were a scheme relating to an educational endowment mentioned in sub-section two of the said section. Extension of 32 & 33 Vict. c. 56, s. 19, as to schools excepted from the provisions as to religion.

8. Whereas by section twenty-five of the principal act it is enacted as follows: "Where an endowment or part of an endowment originally given to charitable uses less Amendment of 32 & 33 Vict. c. 56, s. 25, as to new endow-

(*c*) By this act Protestant Trinitarian Dissenters taking the oath of allegiance were exempted from the penalties of Nonconformity.

36 & 37 Vict. c. 87, s. 8.

than fifty years before the commencement of this act has, by reason of having been spent on school buildings or teachers' residences, or playground or gardens attached to such buildings or residences, become so mixed with an old endowment given more than fifty years before the passing of this act, that in the opinion of the commissioners (subject to appeal to her Majesty in council) it cannot conveniently be separated from such old endowment, then the whole endowment shall for the purposes of this act be deemed to be an endowment originally given to charitable uses more than fifty years before the commencement of this act," and it is expedient to amend the said section: Be it therefore enacted, that—

ment mixed with old buildings.

Where it appears to the commissioners (subject to appeal to her Majesty in council) that the endowment originally given less than fifty years before the commencement of the principal act is in value not less than the old endowment and was given under the belief that the old endowment was attached to some particular church, sect, or denomination, a scheme relating to such endowment shall provide for the giving of religious instruction to the scholars belonging to such church, sect, or denomination.

Scheme as to endowments in which schools under 31 & 32 Vict. c. 118, are interested.

9. [Where two or more schools are jointly interested in an educational endowment, and one of such schools is a school mentioned in section three of "The Public Schools Act, 1868," the commissioners shall not, without the consent of the special commissioners for the time being under "The Public Schools Act, 1868," deal by any scheme with the interest of such last-mentioned school in the endowment, but, with the consent of those commissioners to the dealing with such interest, may, by a scheme

under the principal act, deal with such interest as well as with all other interests in such endowment] (*d*). 36 & 37 Vict. c. 87, s. 9.

10. A provision inserted in pursuance of section twenty-eight of the principal act in any scheme, whether made before or after the passing of this act, shall not be deemed to give the Charity Commissioners for England and Wales any power to alter any portions of such scheme except by a scheme established in pursuance of the acts for the time being in force relating to such Charity Commissioners, or any of those acts, and upon the same application, and after the same procedure and notices, and subject to the same right of appeal as a scheme established under those acts by the Charity Commissioners in the exercise of their ordinary jurisdiction (*e*). Explanation of 32 & 33 Vict. c. 56, s. 28, as to alteration of schemes.

11. Where a scheme under the principal act gives the governing body of any endowed school power to make regulations respecting the religious instruction given at such school, the scheme shall also provide for any alteration in such regulations not taking effect until the expiration of not less than one year after notice of the making of the alteration is given. Alteration of religious instruction.

12. Whereas by section thirty-four of the principal act it is provided as follows: "During three months after the first publication of the draft of a scheme the commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall receive any alternative scheme submitted to them by the governing Amendment of 32 & 33 Vict. c. 56, ss. 34—36, as to time for objections to schemes.

(*d*) Repealed by the Statute Law Revision Act, 1883.

(*e*) See sect. 28 of the Endowed Schools Act, 1869, *ante*, p. 259; sects. 54—60 of the Charitable Trusts Act, 1853, with the notes thereon, *ante*, p. 154; sects. 2—10 of the Charitable Trusts Act, 1860, *ante*, p. 206; and sects. 4—11 of the Charitable Trusts Act, 1869, *ante*, p. 230.

36 & 37 Vict. c. 87, s. 12.

body of any endowment to which the scheme of the commissioners relates:" and it is expedient to reduce the said period of three months to two months:

Be it therefore enacted, that—

"Two months" shall be substituted for "three months" in the said section, and all references in the principal act to the said three months shall be construed to refer to the said two months.

Amendment of 32 & 33 Vict. c. 56, s. 37, as to approval of Committee of Council on Education to schemes.

13. The Committee of Council on Education as soon as a scheme is submitted to them shall, before approving the same, cause the scheme to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the first publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme.

After the expiration of the said month the Committee of Council on Education may, if they think fit, approve the scheme or may remit the scheme, with such declaration as the nature of the case seems to them to require, to the commissioners; and section forty of the principal act (*f*), as to the proceedings where a scheme is remitted with a declaration, shall in such case apply.

The Committee of Council on Education as soon as they approve a scheme shall forthwith cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that unless within two months after the publication of the scheme when approved a petition is presented in pursuance of the

(*f*) *Ante*, p. 268.

principal act to her Majesty in council against the scheme, or such petition as in this section mentioned is presented to the Committee of Council on Education, such scheme may be approved by her Majesty without being laid before parliament. 36 & 37 Vict. c. 87, s. 13.

During the said two months a petition praying that the scheme may be laid before parliament may be presented to the Committee of Council on Education by the governing body of the endowment to which the scheme relates, or by the council of any municipal borough directly affected by the scheme, or by any inhabitant ratepayers (not less than twenty) of any municipal borough or place directly affected by the scheme.

14. Whereas by section thirty-nine of the principal act it is provided that her Majesty may by order in council refer any petition to her Majesty in council for the consideration and advice of five members at the least of her Privy Council, of whom two, not including the Lord President, shall be members of the Judicial Committee, and it is expedient to provide that such petition should be heard by persons of legal experience: Be it therefore enacted, that— Amendment of 32 & 33 Vict. c. 56, s. 39, as to appeal to Queen in council.

Every such petition to her Majesty in council in pursuance of section thirty-nine of the principal act shall be referred to the Judicial Committee of her Majesty's Privy Council in like manner as if it were an appeal from a court from which an appeal lies to her Majesty in council, and the Judicial Committee shall hear and deal with such petitions in like manner as such appeals, and shall have the same power with respect to the costs of parties to the petition and otherwise as they have with respect to any such appeal, and shall make to her Majesty a report or recommendation thereon (the nature of which shall be

36 & 37 Vict. c. 87, s. 14.

stated in open court) in like manner as in the case of any such appeal.

[Any power by the Supreme Court of Judicature Act, 1873, conferred on her Majesty of directing that appeals which ought to be heard by the Judicial Committee shall be heard by the appellate branch of such court shall, if her Majesty in council thinks fit so to direct, apply to petitions presented in pursuance of the said section thirty-nine in like manner as if they were appeals, and if either an order in council relating to other appeals or any separate order in council direct that such petitions be referred for hearing to and be heard by the appellate branch of the said court, the same shall be referred to and heard by that branch of the court accordingly] (*g*).

Laying of schemes before Parliament, and approval of her Majesty in council.

15. If, at the expiration of the time for a petition to her Majesty in council against any scheme, no such petition has been presented, and no petition praying that the scheme be laid before parliament has been presented in pursuance of this act to the Committee of Council on Education, it shall be lawful for her Majesty by order in council to declare her approbation of such scheme without the same being laid before parliament.

If any such petition has been presented, the scheme shall be laid before both Houses of Parliament, and shall be so laid forthwith, if parliament is then sitting, after the expiration of the time for the presentation of a petition to her Majesty in council, or (if a petition is presented to her Majesty in council against the scheme) after any later date at which the petition is withdrawn, or her Majesty in council directs the scheme to be laid before parliament, and if parliament be not then sitting, shall be so laid

(*g*) Repealed by the Statute Law Revision Act, 1883.

within three weeks after the beginning of the next ensuing session of parliament; and if such scheme has lain before parliament for not less than two months during the same session, then unless an address has been presented within such two months by one or other of the Houses of Parliament praying her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for her Majesty by order in council to declare her approbation of such scheme or any part thereof to which such address does not relate. 36 & 37 Vict. c. 87, s. 15.

16. The commissioners shall make to the Committee of Council on Education in every year a report of their proceedings under the principal act and this act, and such report shall be laid before parliament. Such report shall describe all schemes not laid before parliament which have been approved by her Majesty during the year for which such report is made. Annual report.

17. The power of making and approving a scheme under the principal act as amended by this act shall continue as respects unopposed schemes until thirty-first December one thousand eight hundred and seventy-four, and as respects schemes against which a petition shall have been presented to the Committee of Council on Education, as in this act provided, until the fifteenth August one thousand eight hundred and seventy-four, and no longer (*h*). Continuance of powers of making schemes.

18. Whenever according to the rules, regulations, Graduate of any university

(*h*) Notwithstanding this section, by sect. 8 of the Endowed Schools Act, 1874, any scheme which had before the passing of that act been submitted by the Endowed Schools Commissioners to the Committee of Council on Education for approval might be proceeded with; and the section is repealed.

36 & 37 Vict. c. 87, s. 18.

of the United Kingdom, if otherwise fit, shall be held qualified where the statutes require the head master to be a graduate of Oxford or Cambridge.

statutes, trusts, or constitution of any school, being an endowed school within the meaning of "The Endowed Schools Act, 1869," and with regard to which the said commissioners are thereby empowered to make a new scheme, the head master or any other master is required to be a graduate of some specified university or universities, a graduate of any university of the United Kingdom having the degree which would be a qualification if it had been granted by one of the said specified universities, shall in future, if otherwise qualified, be eligible as such head master or other master.

Application of act to schemes laid before Parliament during present session.

19 (*i*). Where a scheme has been laid before parliament during the present session, but has not at the expiration of such session lain for forty days before parliament, and no address has been presented by either House of Parliament praying her Majesty to withhold her consent from such scheme or any part thereof, the Committee of Council on Education may, if they think fit, cause to be published and circulated, in such manner as they think sufficient for giving information to all persons interested, a notice stating that unless within two months after the first publication of the notice such petition as is in this section mentioned is presented to the Committee of Council on Education such scheme may be forthwith approved by her Majesty.

During the said two months a petition praying that the scheme may lie before parliament during two months as directed by this act may be presented to the Committee of Council on Education by any governing body, council, or ratepayers, who would, if such scheme were approved by such committee after the commencement of this act, be

(*i*) Repealed by the Statute Law Revision Act, 1883.

authorized by this act to present a petition praying that such scheme may be laid before parliament. 36 & 37 Vict. c. 87, s. 19.

If no such petition is presented within the said two months it shall be lawful for her Majesty by order in council to declare her approbation of such scheme in like manner as if it had lain for forty days before parliament in accordance with the principal act.

Any scheme to which this section applies and which is not approved by her Majesty under this section shall continue to lie before parliament, and the provisions of this act shall apply in like manner as if such scheme had been laid before parliament in pursuance of this act.

20 (*k*). The principal act is hereby repealed as from the commencement of this act to the extent mentioned in the third column of the schedule to this act: Provided, that this repeal shall not— Repeal.

(a) Affect anything duly done or suffered under any enactment hereby repealed; or

(b) Affect any right, obligation, or liability acquired or incurred under any such enactment; or

(c) Affect any legal proceeding or remedy in respect of such right, obligation, or liability.

(*k*) Repealed by the Statute Law Revision Act, 1883.

[SCHEDULE

36 & 37 Vict. c. 87.

SCHEDULE.

A description or citation of a portion of an act is inclusive of the words or other part first or last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
32 & 33 Vict. c. 56	The Endowed Schools Act, 1869.	Section thirty-seven down to "all persons interested," section thirty-nine from "Her Majesty by Order in Council may refer any such petition," down to "information for obtaining a scheme," and section forty-one, except as regards schemes which have lain for forty days before Parliament before the commencement of this act.

THE ENDOWED SCHOOLS ACT, 1874.

37 & 38 Vict. c. 87.

An Act to amend the Endowed Schools Acts.

[7th August, 1874.]

37 & 38 Vict. c. 87, s. 1.

Be it enacted by the queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Transfer of Powers.

Transfer of powers of Endowed Schools Commissioners to Charity Commissioners.

1. On and after the thirty-first day of December one thousand eight hundred and seventy-four, all powers and duties by the Endowed Schools Acts vested in or imposed on the Endowed Schools Commissioners shall be transferred to and imposed on the Charity Commissioners, and, except as otherwise provided by this act, shall be exercised and performed by the Charity Commissioners in like manner and form and subject to the same conditions, liabilities, and incidents respectively as such powers and duties have been exercised and performed by the Endowed Schools Commissioners, or as near thereto as circumstances permit. On and after the thirty-first day of December one thousand eight hundred and seventy-four the commissioners, secretary, assistant commissioners, and other persons appointed and employed in pursuance of the Endowed Schools Acts shall cease to hold office.

Power to add to Charity

2. Her Majesty and her successors may at any time

37 & 38 Vict. c. 87, s. 2.

Commissioners.

after the passing of this act, by warrant under her sign manual, from time to time appoint any number of persons not exceeding two to be paid Charity Commissioners for England and Wales, and a person to be secretary in addition to the three paid Charity Commissioners and secretary capable of being appointed under the Charitable Trusts Acts, 1853 to 1869. The two additional commissioners and additional secretary appointed in pursuance of this act shall hold office during her Majesty's pleasure, and their salaries shall, unless otherwise directed by Parliament, cease to be paid after the expiration of five years from the said thirty-first day of December one thousand eight hundred and seventy-four (*a*).

Save as in this section mentioned, the additional commissioners shall have the same powers, perform the same duties, and stand in all respects in the same position as the other paid Charity Commissioners with the exception of the Chief Commissioner.

The Commissioners of her Majesty's Treasury may allow the Charity Commissioners to employ such number of assistant commissioners, officers, and clerks as the Commissioners of her Majesty's Treasury may think necessary for the purpose of enabling the said Charity Commissioners to perform the additional duties imposed upon them by this act.

Salaries of Charity Commissioners and their officers.

3. There shall be repealed so much of the Charitable Trusts Acts, 1853 to 1869, as regulates the amounts of the salaries of the commissioners, their secretary and inspectors; and there shall be paid to the commissioners, their secretary or secretaries, assistant commissioners, inspectors, officers, and clerks, whether appointed under this act or

(*a*) See on sect. 59 of the Endowed Schools Act, 1869.

under the said Charitable Trusts Acts, out of moneys provided by Parliament, such salaries as the Treasury may from time to time determine. Provided that no decrease shall be made in pursuance of this section in the salary of any Charity Commissioner, secretary, inspector, officer, or clerk appointed before the passing of this act under the said Charitable Trusts Acts, or any of them. 37 & 38 Vict. c. 87, s. 3.

Amendment of Law.

4. Any power by the Endowed Schools Act, 1869, vested in the Charity Commissioners, upon application made to them by the commissioners under the said act, may after the said thirty-first day of December one thousand eight hundred and seventy-four be exercised by the Charity Commissioners of their own motion (*b*). Exercise of certain powers by Charity Commissioners.

5. A scheme of the Charity Commissioners made in pursuance of the powers of this act and the Endowed Schools Acts, or any of them, shall not be submitted to the Committee of Council on Education unless it has been approved at a meeting of the board at which there are present not less than three commissioners (of whom one shall be the Chief Commissioner, or, in his absence from illness or unavoidable cause, such other Charity Commissioner as may for the time being be named by the Committee of Council on Education); in all other respects one Charity Commissioner may act under the Endowed Schools Acts as amended by this act (*c*). Quorum of commissioners.

Miscellaneous and Repeal.

6. The powers of making schemes under the Endowed Schools Acts as amended by this act shall continue in force Continuance of powers transferred to

(*b*) Sects. 28 and 52 of the Endowed Schools Act, 1869; see also sects. 24, 32 and 42 of the same act.

(*c*) See on sect. 59 of the Endowed Schools Act, 1869.

37 & 38 Vict. c. 87, s. 6. Charity Commissioners.

for a period of five years from the said thirty-first day of December one thousand eight hundred and seventy-four (*d*); and during the continuance of such powers any court or judge shall not, with respect to any endowed school or educational endowment which can be dealt with by a scheme under this act and the Endowed Schools Acts, or any of such acts, make any scheme or appoint any new trustees without the consent of the Committee of Council on Education.

Repeal of acts.

7. On and after the said thirty-first day of December one thousand eight hundred and seventy-four the enactments set forth in the schedule annexed hereto shall be repealed to the extent to which such enactments are therein expressed to be repealed.

Provided that the repeal enacted in this act shall not affect—

(1.) Anything duly done under any enactment hereby repealed:

(2.) Any right or privilege acquired or any liability incurred under any enactment hereby repealed;

Saving clause as to certain schemes.

8. Notwithstanding the seventeenth section of the Endowed Schools Act, 1873, any scheme which has before the passing of this act been submitted by the Endowed Schools Commissioners to the Committee of Council on Education for approval may be proceeded with.

Provided that, with respect to every such scheme which has not been approved by the Committee of Council on Education before the passing of this act, such committee shall, before approving the same, cause such scheme, after the passing of this act, and that notwithstanding any prior

(*d*) See note to Endowed Schools Act, 1869, s. 59, *ante*, p. 274.

publication and notice, to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that during one month after the publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme. 37 & 38 Vict. c. 87, s. 8.

9. In this act, so far as is consistent with the context, the expressions following have the meanings hereafter assigned to them; that is to say, Definitions.

The expression "The Endowed Schools Acts" means the Endowed Schools Acts, 1869 and 1873:

The expression "The Endowed Schools Commissioners" means the commissioners appointed in pursuance of the Endowed Schools Act, 1869:

The expression "The Charity Commissioners" means the Charity Commissioners for England and Wales.

10. This act, so far as is consistent with the tenor thereof, shall be construed as one with the Endowed Schools Acts, as amended by this act; and in the construction of the Endowed Schools Acts the expression "the commissioners" shall, unless there is something in the text inconsistent therewith, on and after the said thirty-first day of December one thousand eight hundred and seventy-four, mean the Charity Commissioners; and this act and the other acts mentioned in this section may be cited together as the Endowed Schools Acts, 1869, 1873, and 1874, and this act may be cited separately as "The Endowed Schools Act, 1874." Construction and short title.

[SCHEDULE.

37 & 38 Vict. c. 87.

SCHEDULE.

Acts partly repealed on and after the thirty-first day of December One thousand eight hundred and seventy-four.

Session and Chapter.	Abbreviated Title.	Extent of Repeal.
32 & 33 Vict. c. 56.	The Endowed Schools Act, 1869.	The first paragraph of section fifty-two, and the whole of sections thirty-one, forty-eight, and fifty-nine.
36 & 37 Vict. c. 87.	The Endowed Schools Act, 1873.	Section seventeen.

THE CHARITABLE TRUSTEES INCORPORATION ACT, 1872.

35 & 36 Vict. c. 24.

An Act to facilitate the Incorporation of Trustees of Charities for Religious, Educational, Literary, Scientific, and Public Charitable Purposes, and the Enrolment of certain Charitable Trust Deeds.

[27th June, 1872.]

35 & 36 Vict. c. 24, s. 1.

Whereas it is expedient to facilitate the incorporation of the trustees of charities established for religious, educational, literary, scientific, or public charitable purposes, and to provide for the due protection and transmission of the property belonging to or vested in such charities, or trustees of such charities, and to diminish the expense of enrolment under an act passed in the thirtieth year of the reign of her present Majesty, intituled "An Act to make further provision for the enrolment of certain deeds, assurances, and other instruments relating to charitable trusts:" Be it therefore enacted by the queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Upon application of trustees of any charity, commissioners may grant certificate of registration

1. From and after the passing of this act it shall be lawful for the trustees or trustee for the time being of any charity for religious, educational, literary, scientific, or public charitable purposes, to apply, in manner hereinafter mentioned, to the Charity Commissioners for England and

35 & 36 Vict. c. 24, s. 1.

as a corporate body.

Wales for a certificate of registration of the trustees of any such charity as a corporate body; and if the commissioners, having regard to the extent, nature, and object and other circumstances of the charity, shall consider such incorporation expedient, they may grant such certificate accordingly, subject to such conditions or directions as they shall think fit to insert in their certificate relating to the qualifications and number of the trustees, their tenure or avoidance of office, and the mode of appointing new trustees, and the custody and use of the common seal; and the trustees of such charity shall thereupon become a body corporate by the name described in the certificate, and shall have perpetual succession and a common seal, of which the device shall be approved by the commissioners, and power to sue and be sued in their corporate name, and to hold and acquire, notwithstanding the Statutes of Mortmain (*d*), and by instruments under their common seal to convey, assign, and demise, any present or future property, real or personal, belonging to, or held for the benefit of, such charity, in such and the like manner, and subject to such restrictions and provisions, as such trustees might, without such incorporation, hold or acquire, convey, assign, or demise the same for the purposes of such charity: Provided that nothing herein contained shall be taken or construed so as to extend, modify, or control any of the provisions of an act passed in the ninth year of his Majesty King George the Second, chapter thirty-six, intituled "An Act to restrain the disposition of lands whereby the same become inalienable," or to make valid any gift, grant, or purchase which would be invalid under the enactments contained in that act.

(*d*) 9 Hen. III. c. 36; 7 Edw. I. st. 2; 13 Edw. I. cc. 32 and 33; 27 Edw. I. st. 2; 18 Edw. III. st. 3, s. 3; 15 Ric. II. c. 5.

35 & 36 Vict. c. 24, s. 2.

Estate to vest in body corporate.

2. The certificate of incorporation shall vest in such body corporate all real and personal estate, of what nature or tenure soever, belonging to or held by any person or persons in trust for such charity, and thereupon any person or persons in whose name or names any stocks, funds, or securities shall be standing in trust for the charity, shall transfer the same into the name of such body corporate, except as hereinafter provided; and all covenants and conditions relating to any such real estate enforceable by or against the trustees thereof before their incorporation shall be enforceable to the same extent and by the same means by or against them after their incorporation: Provided always, that if such property shall be of copyhold or customary tenure, and liable to the payment of any fine or heriot on the death or alienation of the tenant or tenants thereof, it shall be lawful for the lord or lady of the manor of which such property shall be holden, on the granting of the said certificate, and at the expiration of every period of forty years thereafter so long as such property shall belong to such body corporate, to receive and take a sum corresponding to the fine and heriot, if any, which would have been payable by law upon the death or alienation of the tenant or tenants thereof, and to recover the same by any means which such lord or lady could have used in the event of the death or alienation of the tenant or tenants of such property, such payments to be in full of all fines and heriots payable in respect of the same property: Provided also, that such certificate shall not have the effect of summarily transferring or directing the transfer to the incorporated trustees of any stocks, funds, or securities held by the official trustees of charitable funds for the benefit of the charity, but the same shall be transferable only by the official trustees to the incorporated trustees

35 & 36 Vict. c. 24, s. 2.

under the discretionary order of the commissioners, and by the ordinary means of transfer or assignment.

Particulars respecting application.

3. Every application to the commissioners for a certificate under this act shall be in writing, signed by the person or persons making the same, and shall contain the several particulars specified in the schedule hereto, or such of them as shall be applicable to the case. The said commissioners may require such declaration or other evidence in verification of the statements and particulars in the application, and such other particulars, information, and evidence, if any, as they may think necessary or proper.

Nomination of trustees, and filling up vacancies.

4. Before a certificate of incorporation shall be granted, trustees of the charity shall have been effectually appointed to the satisfaction of the commissioners, and where a certificate of incorporation shall have been granted vacancies in the number of the trustees of such charity shall from time to time be filled up so far as shall be required by the constitution or settlement of the charity, or by any such conditions or directions as aforesaid, by such legal means as would have been available for the appointment of new trustees of the charity if no certificate of incorporation had been granted, or otherwise as shall be required by such conditions or directions as aforesaid, and the appointment of every new trustee shall be certified by or by the direction of the trustees to the commissioners, either upon the completion of such appointment or when the next return of the yearly income and expenditure of the charity shall or ought to be made to the commissioners under the general law (*e*), with which the certificate of such appoint-

(*e*) See sect. 44 of the Charitable Trusts Amendment Act, 1855, *ante*, p. 200.

ment shall be sent, and within one month after the expiration of each period of five years after the grant of a certificate of incorporation, or whenever required by the commissioners, a return shall be made to the said commissioners by the then trustees of the names of the trustees at the expiration of each such period with their residences and additions. 35 & 36 Vict. c. 24, s. 4.

5. After a certificate of incorporation has been granted under the provisions of this act all trustees of the charity, notwithstanding their incorporation, shall be chargeable for such property as shall come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects, and defaults, and for the due administration of the charity and its property, in the same manner and to the same extent as if no such incorporation had been effected, and nothing herein contained shall diminish or impair any control or authority exerciseable by the commissioners over the trustees who shall be so incorporated, but they shall remain subject jointly and separately to such control and authority as if they were not incorporated. Liability of trustees and others, notwithstanding incorporation.

6. A certificate of incorporation so granted shall be conclusive evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which incorporation has taken place. Certificate to be evidence of compliance with requisitions.

7. The said commissioners shall keep a record of all such applications for and certificates of incorporation, and shall preserve all documents sent to them under the provisions of this act, and any person may inspect such documents, under the direction of the commissioners, and any person Commissioners to keep record of applications for certificates, &c., and charge fees for inspection.

35 & 36 Vict. c. 24, s. 7.

may require a copy or extract of any such document to be certified under the hand of the secretary or chief clerk of the said commissioners, and there shall be paid for such certified copy or extract a fee, to be fixed by the commissioners, not exceeding fourpence for each folio of such copy or extract.

Enforcement of orders and directions of commissioners.

8. All conditions and directions inserted in any certificate of incorporation shall be binding upon and performed or observed by the trustees as trusts of the charity, and shall also be enforceable by the same means or in the same manner as any orders made by the commissioners under their ordinary jurisdiction may now be enforced (*f*).

Applications and certificates to be stamped.

9. Every application for a certificate of incorporation under this act, and every such certificate, shall be charged with a stamp duty of ten shillings, and a stamp denoting the payment of that duty shall be impressed or fixed upon such application or certificate.

Gifts to charity before incorporation to have same effect afterwards.

10. After the incorporation of the trustees of any charity pursuant to this act every donation, gift, and disposition of property, real or personal, theretofore lawfully made (but not having actually taken effect), or thereafter lawfully made by deed, will, or otherwise to or in favour of such charity, or the trustees thereof, or otherwise for the purposes thereof, shall take effect as if the same had been made to or in favour of the incorporated body or otherwise for the like purposes.

Contracts not under seal to be binding in certain cases.

11. Every contract made or entered into by the trustees of a charity, which would be valid and binding according

(*f*) See sect. 14 of the Charitable Trusts Act, 1853; and sect. 9 of the Charitable Trusts Amendment Act, 1855.

to the constitution, settlement or rules of the charity, if no such incorporation had taken place as aforesaid, shall be valid and binding, although the same shall not have been made or entered into under the common seal of the trustees. 35 & 36 Vict. c. 24, s. 11.

12. Any company or person who shall make or permit to be made any transfer or payment *bonâ fide*, in reliance on any instruments to which the common seal of any body corporate created under this act is affixed, shall be indemnified and protected in respect of such transfer or payment, notwithstanding any defect or circumstance affecting the execution of the instrument. Payments on transfers in reliance on corporate seal protected.

[**13.** Deals with enrolment where deeds have been lost or not duly enrolled.] Enrolment where deeds have been lost or not duly enrolled.

14. The words "public charitable purposes" shall mean all such charitable purposes as come within the meaning, purview, or interpretation of the statute of the forty-third year of Queen Elizabeth, chapter four, or as to which, or the administration of the revenues or property applicable to which, the Court of Chancery has or may exercise jurisdiction (*g*); and the word "trustees" shall include the governors, managers, or other persons having the conduct or management of any charity. Definition of terms "public charitable purposes," "trustees."

15. This act may be cited for all purposes as "The Charitable Trustees Incorporation Act, 1872." Short title.

SCHEDULE (*h*).

The objects of the charity and the rules and regulations of the same, together with the date of and parties to every

(*g*) See Introduction, Part II. (*h*) See sect. 3, *supra*.

35 & 36 Vict. c. 24.

deed, will, or other instrument, if any, creating, constituting, or regulating the same.

A statement and short description of the property, real and personal, which at the date of the application is possessed by or belonging to or held on behalf of such charity.

The names, residences, and additions of the trustees of such charity.

The proposed title of the corporation, of which title the words "trustees" or "governors" and "registered" shall form part.

The proposed device of the common seal, which shall in all cases bear the name of incorporation.

The regulations for the custody and use of the common seal.

This act was not passed at the suggestion of the Charity Commissioners, and it has not been largely used. The opinion is expressed by the Charity Commissioners in their twenty-first report that corporations cannot generally be regarded as eligible trustees for the administration of charities, though they do not deny that there may be numerous cases in which the operation of the act might be beneficial. They observe that most of the advantages which might be derived from this act can be readily secured without the attendant disadvantages by the endowments being vested in the official trustee of charity lands or the official trustees of charitable funds, as the case may require (*i*). It is to be observed that sect. 1 leaves the granting of the certificate of incorporation entirely within the discretion of the Charity Commissioners.

A form of application for a certificate under this act (as issued by the Charity Commission) is appended.

(*i*) See the 21st Report of the Charity Commissioners for England and Wales, Parliamentary Papers, 1874, Vol. 15.

35 & 36 Vict. c. 24.

Application under "The Charitable Trustees Incorporation Act, 1872."

NOTE.—All applications not made on the printed form should be written on foolscap paper, *bookwise*, with a margin to the left hand of the first and third, and to the right hand of the second and fourth, pages.

[10*s.* stamp to be impressed here.]

TO THE CHARITY COMMISSIONERS FOR ENGLAND AND WALES.

The application of the undersigned persons being the whole of the present trustees of the charity called or known as in the parish of in the county of .

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*NOTE.—State whether for religious, educational, literary, scientific, or public charitable purposes.

†NOTE.—If there should not be any deed or other instrument of foundation, the date and mode of creation of the charity should be stated.

‡NOTE.—All copies to be written on foolscap paper, *bookwise*, with margins as stated above. But if the instrument of foundation has been printed, it will be sufficient if a print be furnished.

§NOTE.—State the nature of the instrument by which the charity is now governed or regulated.

I. The charity was created and constituted for* purposes by [a deed or instrument† dated the day of 1] or [by the will of dated the day of 1 , and proved in the Court of on the day of 1] a copy whereof is appended to this application.‡

II. The charity is now governed by [certain rules and regulations] or [by§] a copy whereof is also appended to this application.

III. A statement and short description of the property, real and personal, now possessed by, or belonging to, or held on behalf of the charity, and of the income derived therefrom, or otherwise receivable for the purposes of the charity, are given in the first schedule hereto.

IV. The names, residences, and descriptions of the present trustees of the charity, and the mode and date of their respective appointments, are stated in the second schedule hereto. The

35 & 36 Vict. c. 24.

vacancies which have occurred in the trust since the last appointment of trustees, and the date and mode of the occurrence of each vacancy, are also stated in the same schedule.

V. The following is the proposed title* of incorporation:—

* NOTE. — The words "trustees" or "governors" and "registered" must form part of this title.

VI. The following is the proposed device of the common seal:—†

† NOTE. — The device should bear the name of the incorporation.

VII. The following are the proposed regulations for the custody and use of the common seal:—

VIII. The arrangements proposed for filling up vacancies in the body of trustees are as follows, viz.:—

1st Schedule [giving a statement of the property and income belonging to the charity].

2nd Schedule [giving a list of the present trustees of the charity in the order of their appointment, setting forth their respective residences and descriptions, and the date and mode of the appointment of each, and also a list of the vacancies that have occurred in the trust since the last appointment, with the date and mode of occurrence of each vacancy].

We declare that the above statements are in all respects true according to our information and belief, and we hereby apply for a certificate of incorporation of the above-named charity, under "The Charitable Trustees Incorporation Act, 1872."

Dated this day of 18 .

NOTE.—The application must be signed by all the trustees.

NOTE. — The original trust deeds or instruments should in all cases be sent, if possible, with the application.

This application is forwarded by , to whom it is requested that all communications may be addressed.

ACTS AFFECTING THE JURISDICTION OF THE CHARITY COMMISSIONERS.

21 & 22 Vict. c. 71.

An Act to substitute in certain cases the Bishop of one Diocese for the Bishop of another as a Trustee of certain Trusts. [2nd August, 1858.]

21 & 22 Vict. c. 71, s. 1.

Whereas it frequently happens that the bishop of a diocese is a trustee of real or personal estate for charitable or other public purposes, or is invested with powers in relation to charities and public trusts within his diocese: And whereas, in consequence of the altered limits of dioceses in England, it is expedient to make new provisions for such cases: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Charity Commissioners may make order enabling bishop of one diocese to act for another, as to certain trusts, &c.

1. In all cases in which the bishop of a diocese is as such bishop, alone or jointly with any other person or persons, trustee of, or invested with any power of nomination or control, or other power in relation to any charitable foundation or other trust for public purposes within, or in favour of the clergy, parishioners, or other persons or objects of or belonging to any place which, at the time when such bishop or his predecessor was first invested with such trust or power, was within that diocese, or concerning any church or chapel in any such place, and by reason of an alteration of the limits of the diocese, such

21 & 22 Vict. c. 71, s. 1.

place is transferred to and included in some other diocese, it shall be lawful for the Charity Commissioners for England and Wales, if it appear to them that such trust or power was first so vested in the bishop or his predecessor by reason of the place being then within his diocese, and may be conveniently vested in the bishop in whose diocese such place is included, to make an order under their seal, substituting from the date thereof for the first-mentioned bishop the bishop of the diocese in which such place is included, and such order shall operate to vest in such lastly-mentioned bishop, either solely or jointly with any other person or persons, as the case may require, all estate, property, stock, funds, monies, securities, rights, titles, patronage, and authority in relation to the charity or trust, as fully and effectually as if he had been originally appointed to have and exercise the same.

Order to be made on the application of the bishops or of one of them.

2. Provided, that every order to be made under this act shall be made upon the application of the bishops concerned in such order, or one of them; and no such order shall be made in relation to any advowson or right of patronage or presentation, part of the possessions of a see, which might be exchanged, or otherwise disposed of by scheme of the Ecclesiastical Commissioners confirmed by Her Majesty in Council; nor shall any such order under this act be made in relation to any ecclesiastical patronage or power of nomination or appointment of any curate, chaplain, or spiritual person under any trust, without the consent of the Ecclesiastical Commissioners under their common seal.

How costs are to be defrayed.

3. Any costs necessarily incident to effecting the aforesaid transfers shall be defrayed by order of the said Charity Commissioners out of the property, real or

personal, as the said Charity Commissioners may direct, which shall be transferred as aforesaid. 21 & 22 Vict. c. 71, s. 3.

4. Provided always, that nothing herein contained shall be construed to extend to or in any way affect trusts of a visitorial or any other nature or character exercised in or over any college, hall, or school, within the precincts, or under the jurisdiction or government of either of the universities of Oxford or Cambridge, or in or over the colleges or schools of Saint Mary at Eton, Saint Mary at Winchester, and Saint Peter at Westminster. As to trusts of universities, and colleges of Eton, Winchester and Westminster.

5. Provided also, that nothing in this act contained shall be construed to extend to endowments of an eleemosynary or any other character, whose foundation trusts are, or may be, governed by any specific Act of Parliament. Nothing to affect certain endowments, &c.

THE COPYHOLD ACT, 1858.

21 & 22 Vict. c. 94.

21 & 22 Vict. c. 94, s. 15.

15. In the case of a corporation or other lord of any manor holden upon any charitable trust within the provisions of the Charitable Trusts Act, 1853, or Charitable Trusts Amendment Act, 1855, not authorized to make an absolute sale otherwise than under the provisions of the said last-mentioned acts, or of the Copyhold Acts (*a*), the consideration money to be paid for the redemption or sale of any rent-charge, or as compensation for any enfranchisement, may, at the option of the lord, be paid into the hands of the official trustees of charitable funds acting under the said Charitable Trusts Acts, in trust for the charity to which the manor shall belong; and the principal moneys shall be applied by the trustees, under the order of the Charity Commissioners for England and Wales, for the purposes to which the said money, if paid into the Bank of England in the name of the Accountant-General of the Court of Chancery, would be applicable under the Copyhold Acts, and in the meantime shall be invested, and the dividends of such investments shall be applied, according to the provisions of the said acts relating to charitable funds paid to such official trustees (*b*).

(*a*) Under the Copyhold Acts, 1857 and 1858, compulsory enfranchisements may be made with the consent of the Copyhold Commissioners; under the Charitable Trusts Acts, 1853—1869, absolute sales of charity lands may be made with the consent of the Charity Commissioners.

(*b*) The official trustees of charitable funds under the Charitable Trusts Acts are trustees for the purpose simply of receiving dividends and paying them over to the trustees of the charity; see sects. 17—28 of the Charitable Trusts Amendment Act, 1855, *ante*, p. 183.

THE RECREATION GROUNDS ACT, 1859.

22 Vict. c. 27.

22 Vict. c. 27, s. 5.

Sect. **5** gives the Charity Commissioners power to settle a scheme for the appointment of managers and directors of lands granted for the purposes of this act, in cases where there are no persons named as managers or directors in the deed of conveyance, or where there is a failure of such managers and directors.

Sect. **6** provides that no bye-laws restricting the public use or enjoyment of the grounds shall be valid unless sanctioned with the approbation of the Charity Commissioners.

THE POOR ALLOTMENTS MANAGEMENT ACT, 1873,

36 & 37 Vict. c. 19,

36 & 37 Vict. c. 19.

Provides for the appointment of managing committees of allotments, consisting of not more than twelve nor less than six members of the appointing body, which shall be (1) the allotment trustees, where the number of allotment trustees for the time being exceeds twenty; or (2) the vestry of the parish, empowered to make an order in respect of poor allotments, in pursuance of the act

36 & 37 Vict. c. 19.

2 Will. IV. c. 42, where the number of persons entitled to attend such vestry exceeds twenty.

Rules are given for the appointment of such committees. It is enacted that a notice to quit, signed by three members of a committee, shall be effectual, that rent may be required for a year in advance, and that in respect of rates, tithes, and taxes, the allotment trustees or other functionaries in whom the allotment lands are vested, shall be deemed the occupiers. Provision is made for the application in aid of the poor rate of the rents of lands acquired under any of the public general acts, 59 Geo. III. c. 12, and 1 & 2 Will. IV. cc. 42 and 59, by guardians and overseers, and for the sale, exchange, letting, or otherwise disposing of, in accordance with 5 & 6 Will. IV. c. 69, of lands acquired under these acts, but unfit for the purposes thereof. Sect. 16 provides that nothing contained in the act shall prejudice or affect any scheme made by the Charity Commissioners for England and Wales in exercise of the powers in that behalf conferred upon them by the Charitable Trusts Act, 1853, or any act amending the same, in respect of any allotment being a charity within the jurisdiction of those commissioners, or shall exclude or impair any jurisdiction of those commissioners.

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1875.

38 & 39 VICT. c. 92.

50. The powers by this act conferred on a landlord shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval, in writing, of the Charity Commissioners for England and Wales (*a*). 38 & 39 Vict. c. 92, s. 50.

AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

46 & 47 VICT. c. 61.

40. The powers by this act conferred on a landlord in respect of charging the land (*b*) shall not be exercised by trustees for ecclesiastical or charitable purposes, except with the previous approval, in writing, of the Charity Commissioners for England and Wales. 46 & 47 Vict. c. 61, s. 40.

(*a*) The powers conferred on a landlord by this act are, shortly, (1) to pay to his outgoing tenant compensation for improvements, the amount to be determined in case of disagreement by reference to arbitration; (2) to counterclaim from his tenant compensation for waste or breach of covenant; (3) on paying compensation, to obtain from the county court a charge on the holding in respect thereof.

(*b*) *I. e.*, on account of compensation for improvements paid by him to an outgoing tenant.

THE COMMONS ACT, 1876.

39 & 40 VICT. c. 56.

39 & 40 Vict. c. 56, s. 19.

19. Whereas by several awards made under the authority of Inclosure Acts prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments: And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons: And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Be it enacted that after the passing of this act, notwithstanding anything in any other act contained, it shall not be lawful (save as hereinafter mentioned) to authorize the use of, or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorize the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of the Charitable Trusts Act, 1860, for

the establishment of a scheme for the administration of such fuel allotment accordingly; and provided that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorize the exchange of any fuel allotment, or any part thereof, for land of equal value, situate within the parish or district for the benefit of the poor of which such allotment was set out, if the commissioners are of opinion that by means of such exchange, land better suited for the purpose for which such allotment was set out will be obtained.

39 & 40 Vict. c. 56, s. 19.

ALLOTMENTS EXTENSION ACT, 1882.

45 & 46 Vict. c. 80.

An Act for the Extension of Allotments.

[18th August, 1882.]

45 & 46 Vict. c. 80.

Whereas by an act 2 William IV. cap. 42, the trustees of lands allotted under inclosure acts or otherwise appropriated for the benefit of the poor of any parish, together with the churchwardens and overseers of the poor in parish vestry assembled, are required to let portions of such lands in quantities of not more than one statute acre to any one individual, according to their discretion, as a yearly occupation from Michaelmas to Michaelmas, and at such rent as land of the same quality is usually let for in the said parish, to industrious cottagers of good character, being day labourers or journeymen legally settled in the said parish, or dwelling within or near its bounds:

And whereas the provisions of the said act, from its limited application and other causes, have been only partially carried out:

And whereas it is expedient that having regard to the present poor law, the benefit thereof should be extended to all the irremovable poor, and that the same should be extended to all lands, whether cultivated or uncultivated, held for the benefit of the poor as hereinafter described, and that a summary remedy should be afforded:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords

spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows: 45 & 46 Vict. c. 80, s. 1.

1. In this act "trustees" shall mean trustees, feoffees, and managers, whether corporate or sole, or a committee of the same in such cases as are provided for in the Poor Allotments Management Act, 1873. Interpretation. 36 & 37 Vict. c. 19.

The Poor Allotments Management Act, 1873, provides (s. 2) for the annual appointment of committees of not more than twelve nor less than six members of their own body to act as managers of the allotments (1) by the allotment trustees, where the number of allotment trustees for the time being exceeds twenty, and (2) by the vestry of any parish empowered to make an order in respect of poor allotments in pursuance of the act 2 Will. IV. c. 42, where the number of persons for the time being entitled to attend such vestry exceeds twenty (see *ante*, p. 309).

2. This act may be cited as the Allotments Extension Act, 1882. Short title.

3. This act shall not apply to Scotland or Ireland. Extent of act.

4. All trustees in whom lands are vested or by whom the same are held or managed for the benefit of the poor of any parish or place in or adjoining to that in which such lands are situate, and whereof the rents or produce are distributed in gifts of money, doles, fuel, clothing, bread, or other articles of sustenance or necessity,* shall, where such lands are not otherwise used for the benefit of the parish in which it is situate as a recreation ground, or otherwise for the enjoyment or general benefit of the inhabitants, take proceedings, subject as hereinafter mentioned, for letting such lands in allotments to cottagers, labourers, and others,† and— Trustees of lands vested for benefit of the poor to give notice as to letting.

(1.) They shall set apart for the purpose of this act such field or other portion of the said lands as is most

45 & 46 Vict. c. 80, s. 4.

suitable, as regards distance and otherwise, for allotments, and give public notice, in manner directed by the schedule to this act, of the field or portion so set apart, specifying the situation and extent thereof, and the rent per acre or rod which they are ready to accept for the same when let in allotments, and the times and places at which applications for allotments are to be made:

(2.) If any applications for an allotment are received within the time fixed by the notice the trustees shall forthwith proceed to obtain possession of the field or portion set apart, or of so much thereof as is required for the applications, and to fence the same (if necessary), and to let the same in manner provided by this act:

(3.) If the whole of the field or portion so set apart is let in allotments the trustees shall proceed as soon as they have power so to do to set apart another field or portion of their lands for the purpose of this act, and give public notice thereof as directed by this section, and so on until the whole of their lands are let in allotments, or no applications are received for further allotments:

Provided that—

(a.) If application is made within the time aforesaid for part only of the field or portion so set apart, the remainder thereof may be let as provided by this act in the case of unlet allotments; and

(b.) It shall not be necessary for the trustees to set apart any portion of any such lands as aforesaid, the separation of which from the remainder of such lands not set apart for the time being may make it impossible to let such remainder without substantial loss to

the charity, when the whole of such lands cannot conveniently be set apart for allotments; and they shall have the same powers of letting any remainder of such lands, not set apart for the time being, as if this act had not passed; and

45 & 46 Vict. c. 80, s. 4.

(c.) If no application is made within the time aforesaid for any part of the field or portion so set apart, the like public notice as is required in the first instance shall be given by the trustees once in every succeeding year; and

(d.) Where the said lands are at any time held on lease, the trustees shall proceed to act in pursuance of this act upon the expiration of such lease, and this act shall apply as if such expiration were the passing of this act.‡

* "Or other articles of sustenance or necessity." These words were apparently intended to include all other charities, excepting ecclesiastical, educational, or apprenticeship charities, and would embrace, for example, almshouses (*a*).

† The words of the preamble "to industrious cottagers of good character" seem to have been deliberately enlarged in this section so as to include the whole class of cottagers and labourers.

‡ Where trustees entered into a contract for the sale of land, which was available for allotments under this section, and the Charity Commissioners approved of the contract, and had made an order for sale in the usual way under sect. 24 of the Charitable Trusts Act, 1853, an objection being raised on the part of the purchaser that under the present act the Charity Commissioners had no power to authorize a sale, it was held, on the hearing of a summons under the Vendor and Purchaser Act, 1874 (*b*), to have the question decided whether a good title to the land could be made, that there was nothing in the present act which took away from the Charity Commissioners the power of authorizing a sale of charity lands vested in them under the Charitable Trusts Act, 1853, ss. 24—26, and the Charitable Trusts Amendment Act, 1855, s. 38 (*c*).

(*a*) See Minutes of Evidence taken before Select Committee on Charitable Trusts Acts (P. P. 1884, Vol. 9, p. 294).

(*b*) 37 & 38 Vict. c. 78.

(*c*) *Parish of Sutton to Church*, L. R. 26 Ch. D. 173; 32 W. R. 485; 53 L. J. N. S. Ch. 599; 50 L. T. N. S. 387.

45 & 46 Vict. c. 80, s. 4.

Land allotted under a local inclosure act for the use of the poor, in lieu of certain rights of cutting furze or bushes for fuel, is subject to the provisions of this section, even though such land may not be within the earlier Allotments Act, 2 Will. IV. c. 42 (*d*).

Power to let lands inconveniently situated.

5. If any of the said lands shall be found to lie at an inconvenient distance from the residences of any cottagers or labourers, it shall be lawful for the trustees to let such lands, or any part thereof, for the best rent that can be procured for the same, and to hire in lieu thereof, for the purposes of this act, other land more favourably situated for allotments to the poor of the parish or place for whose benefit such lands are held in trust.

The Select Committee of the House of Commons, appointed in 1884 to inquire into the working of the Charitable Trusts Acts, in the separate report which they published on this act, observe that the power given by this section of letting charity land, which would properly be applicable to the purposes of this act, and hiring in its place other land for similar purposes, applies only where the land lies at an inconvenient distance from the residence of the labourers, and not where the lands are unsuitable for other reasons, *e.g.*, where the breaking up of old pasture land must cause depreciation in value. They suggested that the power given in this section should be extended to cases of inconvenience other than mere inconvenience of situation.

Saving old rights.

6. Neither this act nor section twelve of the Poor Allotments Management Act, 1873, shall extend or be applicable to any lands with regard to which the provisions of the second William the Fourth, chapter forty-two, have been put into operation; but all industrious cottagers of good character, being day labourers or journeymen, whether legally settled in any parish in which the said act of second William the Fourth, chapter forty-two, has been put into operation, or dwelling within its bounds or those of the adjoining parishes, or being poor persons in any such parishes, shall at all times be entitled to and enjoy the

(*d*) *Parish of Sutton to Church*, L. R. 26 Ch. D. 178; 32 W. R. 487; 53 L. J. N. S. Ch. 601; 50 L. T. N. S. 389.

benefits, rights, and privileges created and conferred by the second William the Fourth, chapter forty-two, in as full and ample a manner as they would have been entitled to and have enjoyed the same if they had been legally settled in the parish, and this act and section twelve of the Poor Allotments Management Act, 1873, had not been passed. 45 & 46 Vict. c. 30, s. 6.

Sect. 12 of the Poor Allotments Management Act, 1873, provides that, notwithstanding anything in the act 2 Will. IV. c. 42, contained, it shall be lawful for the authorities executing the powers thereof, or of the Poor Allotments Management Act, to require the rent for any land let under it to be paid for the whole year in advance.

7. The provisions of this act shall apply to lands held for the benefit of the poor of any parish or place situated in or adjoining to the same parish in which such poor dwell; but where the said lands are situated in or adjoining to several parishes, preference shall be given to the cottagers and labourers being inhabitants of the parish or place for the benefit of the poor of which lands are so held. Preference to cottagers living in parishes where the lands are situate.

8. Where any lands shall be held as aforesaid, partly for the benefit of the poor, and partly for other objects, the provisions of the act shall apply to such a proportion of the entire quantity of the said lands as the amount of the gross income applicable to the poor shall bear to the entire gross income thereof; and in case of difference as to the amount of such gross income, or as to the said proportion, the difference shall be referred to the Charity Commissioners for England and Wales, in this act referred to as the Charity Commissioners, whose decision shall be final. Where lands are held partly for benefit of poor.

9. The trustees or the majority of them may from time to time make and, when made, revoke and vary such rules as may be necessary for the appointment and powers of Charity Commissioners to settle rules in certain cases.

45 & 46 Vict. c. 30, s. 9.

local managers of allotments under this act, whether as tenants or agents of the trustees or otherwise, and for preventing the same being built upon or sublet, and preventing any undue preference in such letting, and all other necessary rules, and for giving effect to the provisions of the act; and such rules as are for the time being in force under this section shall be binding on all persons and corporations whatsoever.

Provided that—

(a.) A copy of all rules made under this section shall be sent to the Charity Commissioners as soon as may be after they are made, and the Charity Commissioners may, if they think fit, by order disallow any rules made under this section, and upon such disallowance the same shall be void:

(b.) Such public notice as is provided by the schedule to this act shall be given of all rules in force under this section, and a copy thereof shall be at all times given gratis to any cottager or labourer demanding the same:

(c.) Any four cottagers or labourers, or any of the trustees, if aggrieved by any such rules, whether in respect of anything contained therein, or of any omission therefrom, or if aggrieved by the want of any rules, may complain to the Charity Commissioners, and the Charity Commissioners, if they think such complaint is well grounded, may make such order as appears to them necessary to remedy the complaint. Any such order may rescind or alter any such rules, and may make any rules for the purposes of this section, and such rules shall be duly observed by all persons and corporations whatsoever.

Is it within the powers of the commissioners under this section to allow rules made by trustees, requiring payment in advance of the rent

of the allotments? By the Poor Allotments Management Act, 1873 (*e*), payment of rent in advance is distinctly recognized; by sect. 6 of the present act this is not to extend to any lands with regard to which the provisions of 2 Will. 4, c. 42 (*f*), have been put in operation. Nothing is said on the subject directly in the present act in connection with the allotments which it authorizes. By a somewhat forced construction, sect. 12 of the present act has been taken to mean that the acts amending the Inclosure Act, 1845 (*g*), are to apply in full as if they were enacted in this act; and, in that case, sect. 12 of the Poor Allotments Management Act, 1873, would apply to allotments under the present act. In practice the Charity Commissioners have generally not disallowed rules made by trustees for the protection of charities, by which the payment of rent in advance was prescribed (*h*). 45 & 46 Vict. c. 80, s. 9.

A rule made by trustees under this section, providing that the character of applicants should be taken into account in the choice of tenants for the allotments, has been disallowed by the Charity Commissioners (*i*).

10. If the trustees of any such lands shall omit, neglect, or refuse to give such public notice or to proceed for such setting apart of land as is required by this act, or otherwise to comply with the provisions of this act, any of the said cottagers or labourers, not being less than four, who would be entitled to rent any allotment out of the said lands under the provisions of this act if the same had been duly observed shall be entitled, after due notice to such trustees requiring them to remedy the omission, neglect, or refusal specified in the notice, to apply to the Charity Commissioners, and the said commissioners shall inquire into the complaint, and, if satisfied that such omission, neglect, or refusal exists, and requires to be remedied, may issue their order for remedying, in manner specified therein, such omission, neglect, or refusal, and such order may be

In case of neglect of trustees to publish notice.

(*e*) 36 Vict. c. 19, s. 12.

(*f*) An Act to authorize (in Parishes enclosed under any Act of Parliament) the letting of the Poor Allotments in small portions to industrious Cottagers.

(*g*) 8 & 9 Vict. c. 118.

(*h*) See Parliamentary Papers, 1884, Vol. 9, pp. 295, 391, &c.; and P. P. 1885, Vol. 21.

(*i*) See the Report of the Charity Commissioners for 1884 (P. P. 1884, Vol. 22).

45 & 46 Vict. c. 80, s. 10.

enforced in like manner as an order made by the commissioners under the Charitable Trusts Acts (*k*).

Certificate of Charity Commissioners sufficient defence for trustees.

11. If in the opinion of the trustees such lands as aforesaid shall, either on the ground of distance or on any other ground, be so unsuitable for allotments that no part thereof can be usefully set apart for the purposes of this act, they shall be at liberty to apply to the Charity Commissioners for a certificate to that effect: and if such certificate be granted they shall not be bound to set apart under this act any part of the lands to which the same shall apply: and they shall annually give public notice of such certificate so long as the same shall remain in force in the manner directed by the schedule to this act. Provided always, that it shall be lawful for the said commissioners at any time, for any cause shown to their satisfaction by any person entitled to make an application to them under this act, to revoke such certificate: Provided also that every certificate given by the Charity Commissioners under this section, unless and until revoked by them, shall be final and conclusive.

The words in this section "unsuitable on the ground of distance or any other ground" are somewhat vague, and there being room for great difference of opinion as to what is sufficient to make land "unsuitable" for the purposes of the act, difficulties have from time to time arisen between trustees and the commissioners on the subject. It would seem, indeed, from the wording of the section that the ultimate decision, whether the grounds alleged by the trustees are sufficient or insufficient, must rest with the commissioners. It has been asked, is deterioration in value, as by the breaking up of old pasture land, sufficient to render the land unsuitable for the purposes of the act. In more than one case, where the commissioners had refused to exempt land on this ground from the operation of the act, the trustees have resigned. The Select Committee of 1884 suggest in their report that this matter needs further definition.

(*k*) See Charitable Trusts Act, 1853, s. 14, *ante*, p. 96; Charitable Trusts Amendment Act, 1855, s. 9, *ante*, p. 178; Charitable Trusts Act, 1860, s. 20, *ante*, p. 220.

45 & 46 Vict. c. 80, s. 12.

Arrears of rent, and in case of refusal of tenant to quit.

8 & 9 Vict. c. 118.

12. Any rent for any allotment let in pursuance of this act, and the possession of such allotment in the case of any notice to quit, or other failure to deliver up possession of the same as required by law, may be recovered in all respects as if the same were an allotment under the Inclosure Act, 1845, and the acts amending the same (*l*), and sections one hundred and ten and one hundred and eleven of the Inclosure Act, 1845, shall apply as if they were herein enacted, and as if the trustees, or in the case of the appointment of local managers, such managers, were the allotment wardens within the meaning of the said sections.

In the interpretation of this section it has been questioned whether the first sentence ends with the words "The Inclosure Act, 1845," or with the words "the acts amending the same." In the former case the amending acts are incorporated with this act for all purposes, and not merely in respect of the recovery of rent or possession, and a fore-rent or payment of rent in advance could rightly be demanded by the trustees letting the allotments (*m*).

By sect. 110 of the Inclosure Act, 1845, "If the rent reserved upon the letting of any garden [or, for the purposes of the present act, allotment] by the allotment wardens [or, for the purposes of the present act, trustees] shall at any time be in arrear for forty days, or if at any time during the tenancy, being not less than three calendar months after the commencement thereof, it shall appear to the allotment wardens [trustees] that the occupier of such garden [allotment] shall not have duly observed the terms and conditions of his tenancy, or shall have gone to reside more than one mile out of the parish, then and in every such case the allotment wardens [trustees] shall serve a notice upon such occupier, or in case he shall have gone to reside out of the parish shall affix the same to the door of the church of the parish, determining the tenancy at the expiration of one month after such notice shall have been so served or affixed, and thereupon such tenancy shall be determined accordingly: provided always, that in every such case the allotment wardens [trustees] or their incoming tenant shall pay to the occupier whose tenancy shall have been so determined a fair recompense in money

(*l*) 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; 22 & 23 Vict. c. 43; 31 & 32 Vict. c. 89; and 36 Vict. c. 19.

(*m*) See sect. 12 of the Poor Allotments Management Act, 1873; cf. notes to sects. 1 and 9 of this act.

45 & 46 Vict. c. 80, s. 12.

for any crops (not being crops prohibited by the terms of such tenancy) which may be growing on such garden [allotment] at the time of such determination, and for any manure left on such garden [allotment], or any benefit accruing from the manuring of such garden [allotment] to the wardens [trustees] or their incoming tenant; and the justices to whom application may be made for a warrant to give possession of such garden [allotment] shall settle the amount of such recompense, in case the parties differ about the same, and stay the execution of such warrant until the same shall have been paid or tendered, or (in case such occupier be absent) until the payment thereof shall have been secured to the satisfaction of such justices."

By sect. 111, "In case upon the determination of any such tenancy as aforesaid the occupier of any such garden [allotment] shall refuse to quit and deliver up possession thereof, or if any other person shall unlawfully enter upon, take, or hold possession of any such garden [allotment], or of any part of such allotment, the allotment wardens [trustees] may recover possession according to the mode prescribed by an act passed in the second year of the reign of her Majesty Queen Victoria, intituled *An Act to facilitate the recovery of possession of tenements after due determination of the tenancy* (*n*), in such and the same manner as if the said wardens [trustees] were landlords or a landlord, and as if such overholding occupier or other person were a tenant neglecting or refusing to quit and deliver up possession, within the meaning of the last-mentioned act."

Letting of allotments.

13. With respect to the letting of allotments in any field or portion of land set apart for the purposes of this act the following provisions shall have effect:

(1.) Public notice of the intention to let the same shall be given in manner directed in the schedule to this act:

(2.) Every allotment shall be let free of all charges (that is to say), tithe, tithe rent-charge, rates, taxes, and outgoings whatsoever, and shall be let at such rent as land of the same quality is usually let for in the same parish, with such addition as is necessary to satisfy the said charges; and in this section the expression "outgoings" includes the expense of getting possession, and allotting, dividing, and fencing the

(*n*) 1 & 2 Vict. c. 74.

field or portion of land set apart, and collecting the rents, and any sum payable for such draining of the allotments and means of approach to the allotments as may be necessary: 45 & 46 Vict. c. 80, s. 13.

(3.) The trustees shall, for the purposes of all rates, taxes, tithes, and tithe rent-charge, be deemed to be the occupiers of the allotments:

(4.) One person shall not hold any allotment or allotments exceeding one acre:

A question has arisen under this sub-section, whether it is meant that each allottee should have one acre if sufficient land is available for the purpose, or whether an acre is the maximum only, the minimum size of the allotments being left to the discretion of the trustees or the commissioners. Taken literally, the words simply name a maximum, which no allotment to any one person shall exceed; but no minimum being mentioned, and no one named by the act to decide the size of the allotments, the difficulty was a natural one. Under sect. 9, the trustees, or a majority of them, are to make rules for the appointment and powers of local managers, for preventing the allotments from being built upon or sublet, for preventing any undue preference in the letting, and all other necessary rules, which rules the Charity Commissioners may, of their own motion, disallow or, on complaint being made to them, alter or rescind. Rules as to the size of allotments were perhaps intended to be made under that section. Again, by clause 3 of the Schedule to the act the public notice of the intention to let an allotment is to specify the amount of land to be let; and from this the fixing of the amount would appear to be left to the discretion of the trustees. But it has been pointed out that under sect. 4, sub-sect. (4), there is a possibility of one person applying for and obtaining more than one allotment, so long as the whole amount allotted to him does not exceed one acre; and therefore that, though the trustees may fix the amount of each allotment, that does not involve the right of fixing the amount to be held by each person. See Minutes of Evidence before the Select Committee (P. P. 1884, Vol. IX. p. 302), and the Report of the Select Committee (P. P. 1885, Vol. XXI. p. 499).

(5.) No building whatever shall be erected for or used as a dwelling or workshop on any part of any allotment, and if any building is so erected or used the trustees shall forthwith pull down the same and sell and dispose of the materials thereof, and the proceeds

45 & 46 Vict. c. 80, s. 13.

of the sale shall be applicable in like manner as the rent of the allotment:

(6.) If at any time the trustees are unable to let any allotment or any portion thereof, they may let the same, or such portion thereof as may be unlet, to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable them to resume possession thereof within a period not exceeding twelve months if it should at any time be required to be let for allotments; but such letting shall not be deemed to exonerate the trustees from giving public notice under the foregoing provisions of this section.

Provision for allotments in scheme of Charity Commissioners.

14. Where a scheme is made by the Charity Commissioners after the passing of this act in relation to any charity, and part of the endowment of such charity consists of land other than buildings and the appurtenances of buildings, the Charity Commissioners shall insert in such scheme a provision authorizing the trustees of the charity to set apart portions of the said lands for allotments, and the same may be set apart and let as allotments in like manner as is directed by this act.

The present section applies to "any charity," not only to dole charities such as are mentioned in sect. 4, but in the case of other than dole charities the power of letting in allotments will apply only to charities dealt with by future schemes, and as inserted in such schemes will be permissive only.

Act not to impair powers conferred by Endowed Schools Acts.

15. Nothing in this act contained shall be taken to impair or alter any powers conferred on the trustees of any charities or the Charity Commissioners by the Endowed School Acts or the acts amending the same.

It is not to be inferred from this section that powers conferred upon

the Charity Commissioners by acts other than the Endowed Schools Acts, or acts amending the same, are taken away by this act (*o*). 45 & 46 Vict. c. 80, s. 15.

SCHEDULE.

Regulations as to Public Notices and Lettings.

1. Public notice, for the purposes of this act, shall be given by fixing the notice on the doors of the church of the parish in which the land referred to in the notice is situate, and if there is no church, then on some public building or conspicuous place therein.

2. Public notice of the setting apart under this act of a field or portion of land shall be given in the month of February, or such other month as the trustees may fix, and the first notice shall be given in the said month next after the passing of this act, and if not so given shall be given as soon as may be afterwards, at such time as may be fixed by the trustees, or, in case of their default, by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

Letting.

3. The public notice of the intention to let an allotment out of land when set apart shall specify the amount of land to be let, and the rent per acre or rod to be paid, and the place and time at which applications are to be made, and shall be given annually in the month of June, or in such other month as may be fixed by, or in pursuance of, rules under this act; provided that in any year in which there will be no allotment vacant out of land already set apart, it shall not be necessary to give such notice.

4. The first public notice of the intention to let an allotment shall be given in the month of June next after

(*o*) *Parish of Sutton to Church*, 26 Ch. D. 179; 32 W. R. 487; 53 L. J. N. S. Ch. 601; 50 L. T. N. S. 389.

45 & 46 Vict. c. 80.

the trustees obtain possession of the allotment, or at such other time, not more than one month later, as may be fixed by or in pursuance of rules under this act; and, if not so given, shall be given at such time as may be fixed by the county court judge for the district in which the land is situate, or by the Charity Commissioners.

5. The time for applications for allotments out of land when already set apart shall be the month of August, or such other month as may be fixed by or in pursuance of rules under this act.

6. The allotments shall be let to persons in the order in which they apply, or in accordance with such other order as may be provided by rules under this act, so that there shall be no undue preference shown as regards the persons to whom they are let.

7. Each allotment shall be let on a yearly tenancy beginning at Michaelmas day, or at such other day as may be fixed by or in pursuance of rules under this act.

In addition to the difficulties before mentioned in connection with sects. 5, 9, 11 and 13, sub-sect. (4), a difficulty has been felt in the working of this act, owing to no power being given in it of setting aside leases made by the trustees contrary to the provisions of the act of lands which ought to have been let in allotments in accordance with the provisions of the act. Such leases are not by this act made illegal. The Select Committee suggested that some provision should be made to meet such cases and enforce obedience to the provisions of the act.

The committee further suggested that action might be taken under the Poor Allotments Management Act, 1873, to appoint committees of management of the allotments; that these committees should hire land from the charity trusts, and, by an amending act, be entrusted with the powers conferred on trustees by the present act.

They suggested, also, that further explanation was required as to which of the two objects was to be preferred in case of a conflict of interests—providing allotments for the poor, or obtaining the largest income to be distributed in doles. Since the strong expression of opinion adverse to dole charities, contained in the judgment of the Court of Appeal in *The Campden Charities Case* (*p*), it would seem more natural to prefer allotments to doles; but an authoritative declaration on this point in connection with the present act is felt to be needed.

(*p*) *Ante*, p. 80.

THE PLACES OF WORSHIP SITES AMENDMENT ACT, 1882.

45 & 46 Vict. c. 21.

45 & 46 Vict. c. 21, s. 1.

1. The Places of Worship Sites Act, 1873 (*a*), shall be construed as extending to authorise any corporation, ecclesiastical or lay, whether sole or aggregate, and any officers, justices of the peace, trustees, or commissioners holding land for public, ecclesiastical, parochial, charitable, or other purposes or objects, to grant, convey or enfranchise for the purposes of the act such quantity of land as therein mentioned: Provided as follows:—

(d) Property held on trust for charitable purposes shall not be so granted without the consent of the Charity Commissioners for England and Wales.

(*a*) By which facilities are afforded for the conveyance of pieces of land not exceeding in quantity one acre for sites for places of religious worship and for burial places.

CITY OF LONDON PAROCHIAL CHARITIES ACT, 1883.

46 & 47 Vict. c. 36.

An Act to provide for the better application and management of the Parochial Charities of the City of London. [20th August, 1883.]

46 & 47 Vict. c. 36, s. 1.

WHEREAS it is desirable to make provision for the better application and management of the parochial charities of the city of London:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited as the City of London Parochial Charities Act, 1883.

In consequence of the representations of the Charity Commissioners, made from year to year in their reports, that special powers were needed to enable them to deal satisfactorily with the numerous and wealthy charities in the small and thinly-populated parishes of the City of London, a Royal Commission was appointed on August the 10th, 1878, to inquire into the condition and administration of the parochial charities in the City of London. The commissioners examined nearly 250 witnesses, rectors, vicars, churchwardens or vestry clerks, representing 108 parish churches within the City of London. Their inquiries were generally based upon the reports of Mr. Hare, an inspector and afterwards an assistant commissioner under the Charity Commission, concerning the same charities. On the 12th of March, 1880, the commissioners published their report, recommending the appointment for a certain time of an Executive Commission, paid from the funds of the city charities, to consist of three persons, one, if possible, to be a member of the staff of the

Charity Commissioners; that this commission should be empowered to examine into the trusts, charters, deeds, and documents relating to the origin, as well as the administration, of the city charities; into the leases granted by the trustees and the employment of the revenue; and to examine into their accounts for the seven years then last past; that to this commission should be entrusted the classification of the city charities as ecclesiastical or eleemosynary; that the trustees of foundations classed as ecclesiastical should be directed to hand over the surplus proceeds of their trusts, after deducting the amount appropriated by the temporary commission to particular parishes, to the Ecclesiastical Commissioners, to be applied in the relief of the spiritual wants of the poorer parishes within the metropolitan area; that in regard to charities classed as eleemosynary, the commissioners should decide whether the whole or what part of the funds should remain in the hands of the trustees of such foundations, and that the residue should be handed over to a board, to be composed of representatives of the city parishes, in conjunction with about two representatives from each of the three metropolitan governing bodies, the Common Council, the Metropolitan Asylums Board, and the Metropolitan Board of Works, and also four co-operative members, together with a paid chairman and secretary, to be appointed by the Secretary of State for the Home Department; that the board so formed should enjoy a large discretion in forming schemes for the application of the funds entrusted to them; but liable to the disapproval, within a fixed time, of the Charity Commissioners; and that, after the temporary commission suggested had come to an end, its powers should devolve upon the Charity Commissioners. The present act was framed in deference to these suggestions of the Royal Commission, the Charity Commission being appointed to serve as a temporary commission for most of the purposes mentioned in the Report of the Royal Commission (*a*).

46 & 47 Vict. c. 36, s. 1.

I.—*Appointment and Powers of Commissioners.*

2. The Charity Commissioners for England and Wales (hereinafter called the commissioners) shall be commissioners under this act and have the following powers for the purposes thereof, viz.:

Appointment of commissioners.

(1.) Power to exercise, without application, any of the powers vested in them by the Charitable Trusts Act, 1853, and the acts amending the same (*b*):

16 & 17 Vict. c. 137.

(*a*) See Parliamentary Papers, 1880, Vol. 20.

(*b*) See especially sects. 2 and 4 of the Charitable Trusts Act, 1860, *ante*, p. 206, as compared with sects. 28 and 32 of the Charitable Trusts Act, 1853.

46 & 47 Vict. c. 36, s. 2.

(2.) The like power, jurisdiction, and authority to summon or order persons to give evidence, or bring, produce, or give inspection of documents, and to administer oaths, and to take affidavits and declarations, and to enforce their orders or directions, and generally all such power, jurisdiction and authority as might be exercised by the High Court of Justice if the matters and questions referred to them had come before that court, and in relation to the taking of oaths and the making of affidavits and declarations the proceedings before them shall be deemed to be judicial proceedings:

(3.) Power to determine whether any property is or is not charity property subject to the powers of this act.

Appointment of additional Charity Commissioners.

3. Her Majesty and her successors may at any time after the passing of this act, by warrant under her sign manual, appoint any number of persons, not exceeding two, to be paid Charity Commissioners for England and Wales, who shall hold office during her Majesty's pleasure, and their salaries shall, unless otherwise directed by Parliament, cease to be paid after the expiration of the period prescribed by this act for the duration of the powers and duties vested in or imposed upon the Charity Commissioners for England and Wales by this act.

Save as in this section mentioned, the additional commissioners shall have the same powers, and perform the same duties, and stand in all respects in the same position as the other paid Charity Commissioners, with the exception of the Chief Commissioner.

The Commissioners of her Majesty's Treasury may allow the Charity Commissioners to employ such number of assistant commissioners, clerks, architects, actuaries, surveyors, and other officers as the Commissioners of her Majesty's Treasury may think necessary for the purpose

of enabling the Charity Commissioners to perform the additional duties imposed upon them by this act. 46 & 47 Vict. c. 36, s. 3.

Duration of powers of commissioners.

4. The powers of the commissioners conferred by this act shall continue until the end of the year one thousand eight hundred and eighty-seven, but it shall be lawful for her Majesty the Queen from time to time, with the advice of her Privy Council, to continue the powers of the commissioners for such time as her Majesty thinks fit, but not beyond the end of the year one thousand eight hundred and eighty-nine.

II.—*Inquiry and Statement.*

Commissioners to inquire into the charity property, and classify same in two schedules, one of ecclesiastical and the other of general charity property.

5. The commissioners shall as soon as may be proceed to inquire into the nature, tenure and value of all the property and endowments belonging to the charities mentioned in the digest of parochial charities of the city of London, referred to in the thirteenth report of the Charity Commissioners for England and Wales, and every of them, and every other charity the property or income of which is applicable or applied to or for the benefit of any parish or part of a parish within the city of London or of any inhabitant or inhabitants thereof (hereinafter called the said parochial charities), and the purposes or trusts for or upon which the same have heretofore been or are now held or enjoyed and to which the income thereof has been or is now applied, and shall classify the said property in two schedules. They shall place in one of such schedules all property (hereinafter called "ecclesiastical charity property") which shall be proved to their satisfaction to have been originally given to or for, or to have been duly ordered by any act of parliament, judgment of a Court, or other authority competent in that behalf, to be applied to or for, and to have been accordingly applied to or for any spiritual

48 & 47 Vict. c. 36, s. 5.

purpose which is now a legal purpose, or for the benefit of any spiritual person as such, or for the erection, maintenance, or repair of any ecclesiastical buildings, or for the maintenance of divine service therein, even although such purpose may now have failed, but the user of property for an ecclesiastical or any other purpose shall not be conclusive evidence that such property was originally given for such a purpose, but shall be taken into account by the commissioners in determining whether in each case such property is or is not to be deemed to have been originally given for such a purpose, provided that no property shall be deemed to be ecclesiastical which shall not have been given or applied to or for or in connexion with the Church of England. In the other of such schedules they shall place all other charity property (hereinafter called "general charity property"). The commissioners shall specify in the said schedules the objects or purposes to or for which the said property is now applied, and all vested interests now existing in or upon or in anywise affecting any part of such property.

Where property is mixed, commissioners to apportion ecclesiastical and general.

6. Where property scheduled by the commissioners as ecclesiastical has been mixed with property scheduled by them as general charity property, or where the income of any property is considered by them to be partly ecclesiastical and partly general, the commissioners shall determine and state how much of such property or income, as the case may be, shall be taken to be ecclesiastical, and how much of the same shall be taken to be general.

As to vested interests and equitable claims.

7. No person shall be deemed to have any vested interest within the meaning of this act if the office which he may hold or the emolument which he may receive shall be one tenable or receivable at the pleasure of some other person

or persons, but the commissioners shall consider and may declare what person or persons have, in their opinion, owing to the circumstances of the position of such person or persons, or generally on moral grounds, any fair or equitable claim to continue to receive any emolument now received by him or them out of any endowment. 46 & 47 Vict. c. 36, s. 7.

8. The commissioners shall in such form as they may think most convenient print and publish a statement or successive statements containing the findings and determinations at which they shall have arrived in the course of the inquiry aforesaid. Commissioners to publish result of inquiry.

9. The commissioners shall send a copy of every such statement to the governing body of every endowment affected by such statement, and also to the vestry clerk of every parish in which any endowment affected by such statement is applicable, and also to the Remembrancer of the City of London. Commissioners to send copy of statement to governing bodies, &c.

10. Any person claiming any vested interest affecting any endowment mentioned in any such statement, and alleging that the commissioners have not duly recognized such vested interest, or any person or persons alleging that any property which the commissioners have determined to be charity property within the meaning of this act is not charity property, but that he or they is or are entitled to the same free from any charitable trust affecting the same, may within two months from the date of the publication of such statement apply to the High Court of Justice, by petition or summons at chambers, asking for a declaration that he has a vested interest affecting such endowment or that such property is not charity property (as the case may be). The commissioners may appear upon any such pro- Person claiming vested interest not recognised by commissioners or denying existence of charitable trust may apply to High Court of Justice.

46 & 47 Vict. c. 36, s. 10.

ceedings, and the decision of the judge before whom such petition or summons is heard shall be final (unless special leave to appeal shall be by him given). The judge shall make a declaration in conformity with the justice of the case, and shall have power to order that the costs of the application shall be paid out of the endowment or property in question or by any party to the application as he may think right. Whenever necessary the commissioners shall amend their statement so as to make it conform to the judge's declaration.

III.—*Schemes for better application of Charity Funds.*

Commissioners to frame schemes for charity property.

11. The commissioners shall, as soon as may be after the publication of the statement or statements aforesaid, proceed to prepare a scheme or schemes for the future application and management of the charity property and endowments so classified by them as hereinbefore directed.

Provisions to be inserted in all schemes.

12. In every such scheme the commissioners shall provide for the following objects; that is to say,

(a.) For the vesting in the official trustee of charity lands appointed under the Charitable Trusts Acts, 1853 to 1869 (*c*), of all real property and chattels real belonging to the charity or charities dealt with in the scheme, and for the vesting in the official trustees of charitable funds appointed under the last-mentioned acts (*d*) of all personal property belonging to the charity or charities dealt with in the scheme, upon trust to hold the same real and personal property

(*c*) See sects. 47—50 of the Charitable Trusts Act, 1853, and sect. 15 of the Charitable Trusts Amendment Act, 1855, *ante*, pp. 148—151, 182.

(*d*) See sects. 51 and 52 of the Charitable Trusts Act, 1853, *ante*, p. 151; sects. 12, and 17—28 of the Charitable Trusts Amendment Act, 1855, *ante*, p. 183; and sects. 12, 16, 17, 18, 23 of the Charitable Trusts Act, 1860, *ante*, p. 215.

respectively as in the said acts and hereinafter provided, but subject to all quit-rents, leases, tenancies, equities, reservations, charges, and all other incumbrances and liabilities affecting the same: 46 & 47 Vict. c. 36, s. 12.

(b.) For carrying over to a separate account a sum of money out of the charity property and endowments dealt with by the scheme to answer and provide for the expenses incurred by the commissioners in carrying out this act:

(c.) For saving the vested interest of or making due compensation to every person whom the commissioners may have declared entitled to any vested interest which may be prejudiced by the scheme, and for making compensation to any person whom the commissioners may have considered as aforesaid to have a fair or equitable claim to any emolument taken away by the scheme.

Provisions to be inserted in schemes relating to parishes in first schedule.

13. In every scheme relating to the charity property or endowments belonging to or now applicable in the parishes enumerated in the first schedule to this act, the commissioners shall, subject to the carrying over and to the provision for saving or making compensation hereinbefore contained, provide for the following objects; that is to say,

(a.) For the application of the property scheduled as ecclesiastical charity property, or any part of the income thereof, to the maintenance of the fabric and the services of the church, or to such other of the ecclesiastical purposes to which the same is now applied as are, in the opinion of the commissioners, still beneficial to the inhabitants of each of the said parishes, or to any class thereof; and, subject thereto, to such other ecclesiastical purposes within the parish to which

46 & 47 Vict. c. 36, s. 13.

such property and endowments belong as the commissioners may think most conducive to the spiritual benefit of the inhabitants of the said parish:

(b.) For the application of the property scheduled as general charity property (to such extent as the commissioners may think desirable) to such of the objects and purposes to or for which the same is now applied as the commissioners may consider proper and legal and substantially beneficial to the inhabitants of each of the said parishes, or to any class thereof; and, subject thereto, for the application of such property to any one or more of the following objects, either within the parish to which the property belongs or in which it is now applicable, or within any parish which was formerly united with or formed part of such parish, or in such manner as to secure to the inhabitants of such parish, and to persons employed in such parish though not resident therein, the benefit of such application; that is to say,

To the promotion and improvement of the education of the poorer inhabitants of such parish, and other persons as aforesaid, whether by means of exhibitions, or of technical instruction, or of secondary education, or of art education, or of evening lectures, or otherwise, as to the commissioners may seem good;

To the establishment and maintenance of libraries under such provisions as may make them useful to such poorer inhabitants and other persons as aforesaid;

To the preserving, providing, and maintaining of open spaces and recreation grounds or drill grounds;

To the promotion and extension, in such manner

as the commissioners may think desirable, of provident institutions and of working men's and women's institutes for the benefit of such poorer inhabitants and other persons as aforesaid; 46 & 47 Vict. c. 36, s. 13.

And generally to the physical, moral, and social improvement of the poorer inhabitants and other persons as aforesaid of such parishes by such means as the commissioners may think suitable.

Provisions to be inserted in schemes relating to parishes in second schedule.

14. In every scheme relating to the property or endowments belonging to or now applicable in the parishes enumerated in the second schedule to this act, the commissioners shall, subject to the carrying over and to the provision for saving or making compensation hereinbefore contained, provide for the following objects; that is to say,

(a.) For the application of the property, or any part of the income thereof, scheduled as ecclesiastical charity property, to the maintenance of the fabric and the services of the church, if any, in each parish possessed of ecclesiastical charity property applicable to such purposes or to such other of the ecclesiastical purposes to which the same is now applied as are, in the opinion of the commissioners, still beneficial, and to the maintenance of the fabric and monuments of any churches within the City of London of architectural or historical interest which may not already possess sufficient funds available for that purpose; and, subject thereto, for payment to the Ecclesiastical Commissioners of the surplus income of the said ecclesiastical property, to be by them applied to the maintenance of the fabric of churches, or to the better endowment of existing benefices, or to giving theological instruction to persons preparing for holy orders, or gene-

46 & 47 Vict. c. 36, s. 14.

rally to extending the benefit of clerical or spiritual ministrations in accordance with the doctrines or by the ministers of the Church of England as by law established in the more populous districts of the Metropolis:

(b.) For the administration and management of the property scheduled as general charity property by the new governing body hereinafter constituted (*e*), except in cases where the commissioners may provide as hereinafter mentioned for the administration and management of any property by any existing body or bodies of trustees thereof:

(c.) For the application by the said new governing body, or by any such existing body or bodies of trustees as lastly hereinbefore mentioned in any such case or cases as last aforesaid, of such last-mentioned property (to such extent as the commissioners may think desirable) to such of the objects or purposes to or for which the same are now applied as the commissioners may think proper and legal and substantially beneficial to the inhabitants of the parish in which the same is now applicable, or to any class thereof, or in such manner as to secure to the inhabitants of the said parishes, and to persons employed though not resident therein, the benefit of any one or more of the applications in this section hereinafter mentioned; and, subject thereto, for the application by the said new governing body of such property to any one or more of the following objects within the Metropolis in manner to be specified by the said scheme or schemes; that is to say,

To the promoting the education of the poorer inhabitants of the Metropolis, whether by means of

(*e*) Sects. 48 and 49.

exhibitions, or of technical instruction, or of secondary education, or of art education, or evening lectures, or otherwise, as to the commissioners may seem good; 46 & 47 Vict. c. 36, s. 14.

To the establishment and maintenance of libraries, or museums, or art collections within the Metropolis under such provisions as may make them useful to the poorer inhabitants thereof;

To the preserving, providing, and maintaining of open spaces and recreation grounds or drill grounds within the Metropolis;

To the promotion and extension, in such manner as the commissioners may think desirable, of provident institutions and of working men's and women's institutes for the benefit of the poorer classes of the Metropolis;

To the establishment and maintenance, in such places as the commissioners may think suitable, of convalescent hospitals for the benefit of the poorer classes of the Metropolis;

And generally to the improving, by the above or any other means which to the commissioners may seem good, the physical, social, and moral condition of the poorer inhabitants of the Metropolis.

Schemes relating to parishes in first schedule to this act may provide for union of governing bodies.

15. In any scheme relating to the property or endowments belonging to or now applicable in the parishes enumerated in the first schedule to this act the commissioners may, if they think fit, provide for the union of any existing governing bodies of two or more endowments into one new governing body for each of the said parishes, or for the creation of a new governing body or bodies in each such parish, and for the transfer to such new governing body or bodies (if created) of the control and manage-

46 & 47 Vict. c. 36, s. 15.

ment of the charity property and endowments belonging to or applicable in such parishes.

Schemes relating to parishes in second schedule may provide for payment of moneys to trustees of existing institutions.

16. In any scheme providing for the application of the property scheduled as general charity property now belonging to or applicable in the parishes mentioned in the second schedule to this act, the commissioners may, if they shall think fit, provide for the payment by the said new governing body of any capital or annual sum or sums of money to the trustees or managers of any institution now existing, or which may hereafter exist, for any of the charitable purposes to or for which such general charity property is hereby made applicable, to be applied by such trustees or managers to or for such purpose; and may, in the case of any scheme relating to an open space or recreation ground or drill ground, provide that any lands or hereditaments purchased in pursuance of such scheme shall be conveyed to and vested in the Metropolitan Board of Works or other proper local authority, and that any moneys to be paid for the maintenance of such space or ground shall be paid to the said board or other local authority (as the case may be) in which the legal estate in such open space or ground may be vested.

Commissioners may create new bodies of trustees.

17. In any scheme relating to the general charity property now belonging to or applicable in the parishes mentioned in the said second schedule, the commissioners may (if they shall think fit) provide for the creation of a new body or bodies of trustees, either in a defined local area in the Metropolis or for any one or more of the charitable purposes to or for which such property is hereby made applicable, or in both of these ways, and may also provide for the payment to such new body or bodies of trustees by the said new governing body of such capital or

annual sum or sums of money as the scheme may direct, to be applied by such new body or bodies of trustees in pursuance of the scheme. Where any such scheme provides for the creation of such a new body of trustees in or for any such defined local area, the commissioners shall, so far as conveniently may be, provide for the representation on such new body of trustees of the inhabitants of such local area. 46 & 47 Vict. c. 36, s. 17.

18. In framing any scheme relating to the general charity property now belonging to or applicable in the parishes mentioned in the said second schedule, the commissioners shall consider and declare whether it is for the public advantage that any of the property or endowments belonging to the charity or charities dealt with by the scheme shall continue to be administered and managed by the body or bodies of trustees now administering and managing the same; and the commissioners may in any such case provide that such property or endowments shall continue to be administered and managed by such body or bodies, and in any such case may alter the constitution of any such existing body or bodies of trustees, and, if they shall think fit, unite such bodies or body with any other body or bodies of trustees so as to create a new body or bodies of trustees for the administration, management, and application of such property and endowments in the said parishes, or any one or more of them, or for the application of such property and endowments, or any part of them, to any one or more of the objects to which such property and endowments may be applicable under the fourteenth section of this act. Commissioners may retain or modify existing bodies of trustees.

19. The commissioners shall not be bound to provide in any one scheme for all the objects aforesaid, but may make More schemes than one may be made, and

46 & 47 Vict. c. 36, s. 19.

other objects provided for.

provision for such objects, or any one or more of them, by one or by more schemes in the manner they shall judge most convenient, nor shall anything herein be construed to prevent the commissioners from providing in any such scheme or schemes for any other object which shall upon inquiry appear to them to be necessary or desirable for the purposes of this act, nor from proposing in any scheme any such modifications and variations as to matters of detail and regulation as shall not be substantially repugnant to any of the provisions of this act.

Scheme need not specify precise application of general charity property.

20. The commissioners shall not be bound to specify in any scheme the precise objects to which or the manner in which the general charity property shall be applied by the new governing body, but they may (if they shall think fit) specify such objects or manner with such particularity as they may think necessary, and may (if they shall think fit) leave the details of such application to be subsequently settled by the new governing body in manner hereinafter mentioned.

Saving for endowments less than fifty years old.

21. No scheme shall be so framed as to affect or shall affect any endowment or part of an endowment (as the case may be) originally given to charitable uses less than fifty years before the commencement of this act, unless the governing body of such endowment assent to the scheme.

Educational interests of girls to be regarded.

22. In making schemes for the application of charity property or endowments to educational purposes the commissioners shall have as much regard to the educational interests of girls as of boys.

Saving for educational endowments under 32 & 33 Vict. c. 56, s. 5.

23. It shall not be obligatory upon the commissioners to prepare a scheme under this act for any endowment, or

part of an endowment, which is an educational endowment as defined by section five of the Endowed Schools Act, 1869 (*f*). 46 & 47 Vict. c. 36, s. 23.

IV.—*Procedure for approving Schemes.*

24. When the commissioners have prepared the draft of a scheme they shall cause it to be printed, and printed copies of it to be sent to the governing body of every endowment to which it relates, and to the vestry clerk of the parish in which such endowment is now applicable, and to the Remembrancer of the City of London, and shall also cause the draft, or a proper abstract of it, to be published and circulated in such manner as they think sufficient for giving information to all persons interested. Schemes to be printed and circulated.

25. During two months after the first publication of the draft of a scheme, or any longer time which they may appoint, the commissioners shall receive any objections or suggestions made to them in writing respecting such scheme, and shall duly consider the same. Commissioners to receive suggestions respecting schemes.

26. After the expiration of the two months, or such longer time as to the commissioners may seem proper, the commissioners shall proceed to revise the scheme, and may, if they think fit, amend the same, and republish it and send copies of it as republished to the persons before mentioned, and shall submit the scheme for the approval of the Committee of Council on Education. Schemes to be reprinted and circulated anew.

27. The Committee of Council on Education, as soon as a scheme is submitted to them, shall, before approving the same, cause the scheme to be published and circulated in such manner as they think sufficient for giving informa- Approval of Committee of Council on Education to schemes.

(*f*) *Ante*, p. 239.

46 & 47 Vict. c. 36, s. 27.

tion to all persons interested, together with a notice stating that during one month after the first publication of such notice the Committee of Council on Education will receive any objections or suggestions made to them in writing respecting such scheme. After the expiration of the said month the Committee of Council on Education may, if they think fit, approve the scheme or may remit the scheme, with such declaration as the nature of the case seems to them to require, to the commissioners.

The Committee of Council on Education, as soon as they approve a scheme, shall forthwith cause the scheme so approved to be published and circulated in such manner as they think sufficient for giving information to all persons interested, together with a notice stating that unless within two months after the publication of the scheme when approved a petition is presented to the Committee of Council on Education, such scheme may be approved by her Majesty without being laid before Parliament.

During the said two months a petition praying that the scheme may be laid before Parliament may be presented to the Committee of Council on Education by the governing body of any endowment to which the scheme relates, or by not less than twenty inhabitant ratepayers of the parish in which the endowment is now applicable.

Petitions may be addressed to her Majesty in Council in certain cases.

28. Any person conceiving himself aggrieved by any provision of a scheme, on the ground of its not making due compensation for any vested interest to which he has been declared entitled as aforesaid, may, within two months from the publication of such scheme when approved as aforesaid, petition her Majesty in Council stating the grounds of the petition, and praying her Majesty to withhold her approval from the whole or any part of the scheme. Her Majesty may refer any such petition for

the consideration and advice of three members at the least of her Privy Council, of whom one shall be a member of the Judicial Committee, and such three members may, if they think fit, admit counsel to be heard in support of and against the petition, and shall have the same power with respect to the costs of all parties to the petition as the High Court of Justice would have if the petition were a proceeding therein for obtaining a scheme. Any petition not proceeded with in accordance with the regulations made with respect to petitions presented to the Judicial Committee of the Privy Council shall be deemed to be withdrawn. 46 & 47 Vict. c. 36, s. 28.

It shall be lawful for her Majesty by Order in Council to declare that no cause has been shown why she should withhold her approval from the said scheme or to remit it to the commissioners with such declaration as the nature of the case may require.

29. Where a scheme is remitted with a declaration, the commissioners may either proceed to prepare another scheme in the matter in the same manner as if no scheme had been previously prepared, or may submit for the approval of the Committee of Council on Education such amendments in the scheme as will bring it into conformity with the declaration. Proceedings where scheme is remitted.

The committee may, if they think fit, approve the scheme with such amendments, and the same shall be published and circulated in the same manner and subject to the same right of petition to her Majesty in Council as is before directed in the case of the approval of a scheme, and so on from time to time as often as occasion may require.

30. If within the said two months from the publication of the scheme, when approved as aforesaid, no petition Laying of schemes before Parliament,

46 & 47 Vict. c. 36, s. 30.

and approval of her Majesty in Council.

praying that the scheme be laid before Parliament has been presented in pursuance of this act to the Committee of Council on Education, it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme without the same being laid before Parliament.

If any petition praying that the scheme be laid before Parliament has been presented, but no petition to her Majesty in Council is presented, then the scheme shall be laid before both Houses of Parliament after the expiration of the time for the presentation of a petition to her Majesty in Council. If a petition is presented to her Majesty in Council against the scheme, as well as a petition praying that the scheme be laid before Parliament, then the scheme shall be laid before Parliament after any later date at which the petition is withdrawn or her Majesty in Council has declared as aforesaid that no cause has been shown why she should withhold her approval from the scheme. If Parliament be then sitting, the scheme shall be so laid before it forthwith. If Parliament be not then sitting, the scheme shall be so laid within three weeks after the beginning of the next ensuing session of Parliament; and if such scheme has lain before Parliament for not less than two months during the same session, then, unless an address has been presented within such two months by one or other of the Houses of Parliament praying her Majesty to withhold her consent from such scheme or any part thereof, it shall be lawful for her Majesty by Order in Council to declare her approbation of such scheme or any part thereof to which such address does not relate.

Exception as to schemes for endowments under 100*l.*

31. Where a scheme relates to an endowment or endowments which or each of which (as the case may be) during the three years preceding the commencement of this act has had an average annual gross income of not

more than one hundred pounds, no petition shall be presented to her Majesty in Council with reference to such scheme so far as it relates to any such endowment or endowments. The statement of the commissioners shall be conclusive evidence for the purpose of this section of the income of an endowment. 46 & 47 Vict. c. 36, s. 31.

32. If any scheme, or any part thereof, is not approved by her Majesty, the commissioners may thereupon proceed to prepare another scheme in the matter, and so on from time to time as often as occasion may require. New scheme on non-approval of scheme.

33. Schemes may be from time to time framed and approved for amending any scheme approved under this act, and all the provisions of this act relative to an original scheme shall apply also to an amending scheme, mutatis mutandis. Amendment of schemes.

V.—*Supplemental Provisions.*

34. No scheme shall of itself have any operation, but the same, when and as approved by her Majesty in Council, shall, from the date specified in the scheme, or if no date is specified then from the date of the Order in Council, have full operation and effect in the same manner as if it had been enacted in this act. Schemes, when to take effect.

Where a scheme shall have been so framed as to make it necessary that any further acts should be done in order to carry out the arrangements prescribed by such scheme, the commissioners shall have power, immediately after the making of such Order in Council, to do and execute, or cause to be done and executed, all such acts and deeds, and all such conveyances and assurances in the law whatsoever, as may in their judgment be necessary for carrying out the provisions of the scheme approved by such order,

46 & 47 Vict. c. 36, s. 34.

and for securing the application of the property dealt with by such scheme to the purposes to which such scheme may direct it to be applied.

Effect of scheme.

35. Upon a scheme coming into operation every Act of Parliament, letters patent, statute, deed, instrument, trust, or direction relating to the subject-matter of the scheme, and expressed by such scheme to be repealed and abrogated, shall, by virtue of the scheme and of this act, be repealed and abrogated from the date in that behalf specified, or if no date is specified, from the date of the scheme coming into operation, and all property purporting to be transferred by such scheme shall, without any other conveyance or act in the law (so far as may be), vest in the transferees, and so far as it cannot be so vested shall be held in trust for the transferees.

Evidence of scheme.

36. The Order in Council approving a scheme shall be conclusive evidence that such scheme was within the scope of and made in conformity with this act, and the validity of such scheme and order shall not be questioned in any legal proceedings whatever.

Quorum of commissioners.

37. A scheme of the commissioners shall not be submitted to the Committee of Council on Education unless it has been approved at a meeting of the commissioners at which there are present not less than three commissioners, but in all other respects one commissioner may act under this act.

Extension of 16 & 17 Vict. c. 137, s. 11, and 18 & 19 Vict. c. 124, ss. 6—9, to assistant commissioners.

38. Section eleven of the Charitable Trusts Act, 1853 (*g*) (which relates to the production of documents by public officers), and sections six, seven, eight, and nine of the Charitable Trusts Act, 1855 (*h*) (which relate to

(*g*) *Ante*, p. 95. (*h*) *Ante*, p. 176.

evidence and the attendance and examination of witnesses), shall extend to the assistant commissioners under this act, as if they were the inspectors mentioned in those sections. 46 & 47 Vict. c. 36, s. 38.

39. Whenever it shall appear to the commissioners that any part of the charity property and endowments subject to the provisions of this act, may with advantage be sold and realised, they may direct such property to be sold upon such terms and conditions and to such purchasers as they may think fit, and the trustee or trustees for the time being of such property shall effect such sale, which shall require no further sanction than the order of the commissioners under their seal directing the same, and the proceeds of every such sale shall be paid to the official trustees of charitable funds and invested in their names in Government or parliamentary securities. Commissioners to have power to direct sale of charity property and invest proceeds.

40. During the continuance of the power of making schemes under this act, no court or judge shall, with respect to any charity property or endowment which can be dealt with by a scheme under this act, make any scheme or appoint any new trustees without the consent of the commissioners. Temporary restriction of powers of Charity Commissioners, court, &c.

41. Every interest, right, privilege, or preference, or increased interest, right, privilege, or preference, which any person may acquire after the passing of this act in or relative to any charity or endowment which can be dealt with by a scheme under this act, or in the governing body thereof, or as member of any such governing body, or in or relative to any office, place, employment, pension, compensation, allowance, or emolument in the gift of any such governing body, or paid out of the funds of any such charity or endowment, shall be subject to the provisions of Persons acquiring interest after passing of act to be subject to schemes.

46 & 47 Vict. c. 36, s. 41.

any scheme made under this act; and the governing body of any such charity or endowment shall not, during the continuance of the power of making schemes under this act, begin to build, rebuild, alter, or enlarge any buildings connected therewith, except with the written consent of the commissioners or under the directions of such a scheme; and no moneys arising from any such charity or endowment shall after the passing of this act be applied to the payment of any poor rate or other rate or public charge whatsoever, or to the payment to any parish official of any salary or remuneration, except so far as he may be entitled to receive the same in respect of duties actually performed in connexion with the services of the church, or of services actually rendered in or about the management of any parochial charity, or of duties actually performed in connexion with public worship in the church of the parish.

Service of notices.

42. Notices and documents required to be served on or sent to a governing body or vestry clerk for the purposes of this act may be served or sent by being left at the office, if any, of such governing body or vestry clerk, or being served on or sent to the chairman, secretary, clerk, or other officer of such governing body, or if there is no office, chairman, secretary, clerk, or other officer, or none known to the commissioners (after reasonable inquiry), by being publicly advertised in such newspapers as the commissioners shall think fit, or by being served upon such person or persons and in such manner as the commissioners shall in their discretion think best calculated to give proper notice to the persons concerned with the management of the endowment dealt with by the scheme.

Service by post.

43. Notices and documents required to be served or sent for the purposes of this act may be served or sent by

post, and shall be deemed to be served and received at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notices or documents was properly addressed and put into the post office. 46 & 47 Vict. c. 36, s. 43.

44. The salaries paid and expenses incurred in carrying into effect this act shall in the first instance be defrayed out of moneys to be provided by Parliament, but shall be ultimately repaid to the commissioners of her Majesty's Treasury out of the sums carried over to a separate account as hereinbefore directed (*i*). The commissioners shall determine, by orders under their seal, in what proportions such salaries and expenses are to fall upon the several sums so carried over under each scheme, having regard to the respective values of the endowments dealt with by such schemes respectively. If there shall be any surplus of the sums so carried over as aforesaid under each such scheme after making such repayment, such surplus shall form part of the endowments the application whereof is prescribed by each such scheme. If there shall be any deficiency, such deficiency shall be made up to the commissioners of her Majesty's Treasury by the new governing body hereinafter constituted, out of the funds under their management and control. Expenses of carrying out act.

45. All requisitions and directions made by the commissioners under the authority of this act shall be made by the order of the commissioners under their seal. Requisitions, &c. to be under seal.

46. All orders made by the commissioners shall be enforceable by the same means and be subject to the same Orders to be subject to Charitable Trusts Acts.

(*i*) See sect. 12, sub-s. (b).

46 & 47 Vict. c. 36, s. 46.

provisions as orders of the Board of Charity Commissioners under the Charitable Trusts Acts, 1853 to 1869 (*k*).

Commissioners to make annual report to be laid before Parliament.

47. The report of the commissioners made under section sixty of the Charitable Trusts Act, 1853 (*l*), shall describe the proceedings of the commissioners under this act during the year preceding the thirty-first day of December then last past, and there shall be annexed to such report copies of the schemes approved by her Majesty in council under this act during such year, and of any orders made by the commissioners during such year under the forty-fourth section of this act.

VI.—*New Governing Body.*

Establishment of new governing body for management of charity funds.

48. There shall be established a new governing body under this act, which shall be called "The Trustees of the London Parochial Charities," and shall be a body corporate, with perpetual succession and a common seal. Such new governing body shall administer the property hereinbefore directed to be placed by schemes to be framed by the commissioners under its administration and management, and shall consist of twenty-one persons, of whom five shall be nominated by the crown, four by the corporation of the City of London, and the remainder (four of whom shall, in the first instance, be chosen from among the persons who are now trustees of the parochial charities of the City of London) in such manner or by such persons or bodies as the commissioners shall by scheme provide, regard being had by them to the interests of the various classes of the community who are or may hereafter be interested in the

(*k*) See sect. 14 of the Charitable Trusts Act, 1853, *ante*, p. 96; sect. 9 of the Charitable Trusts Amendment Act, 1855, *ante*, p. 178; sect. 20 of the Charitable Trusts Act, 1860, *ante*, p. 220.

(*l*) *Ante*, p. 158.

charity property to be administered by such new governing body. 46 & 47 Vict. c. 36, s. 48.

Each member shall hold office for six years, but shall be re-eligible.

Every member who shall not have attended a meeting for the period of two years shall vacate his office, but shall be re-eligible.

Commissioners to make regulations for nomination of members of governing body, &c.

49. The commissioners shall by a scheme make regulations prescribing the time and manner of the nominating or electing of the members of the new governing body and regarding the vacating of their office by a certain number of the first members thereof, so as to provide that some of them shall vacate their office at the end of two, others at the end of four, and the rest at the end of six years, and with respect to the filling up of vacancies arising from death or resignation, and generally with respect to the constitution of the new governing body, and the conduct by it of its business, and the making by it of regulations or byelaws, whether varying or merely subsidiary to the rules and regulations made by the commissioners. The commissioners shall also fix the date upon which the functions and powers of the new governing body shall commence.

Schemes to contain no preference for any religious denomination.

50. In all schemes framed under this act affecting general charity property which is not expressly limited, by the deed of foundation, to spiritual purposes of any religious denomination no preference shall be shown to any person on account of membership of any church, nor shall conformity to any church be made the condition of enjoying any benefits, nor shall it be made a condition in appointing a master or mistress to any school founded or reformed under this act, that he or she shall be a member

46 & 47 Vict. c. 36, s. 50.

of any church, nor shall endowments under this act be attached to any institution, admission to which, or to the governing body of which, is limited to the members of any denomination.

Costs of Parliamentary proceedings to be determined by commissioners.

51. The commissioners shall ascertain what costs, charges, and expenses have been reasonably incurred by the existing trustees of the city parochial charities, or any of them, in relation to this act, or the bills of similar name in the sessions of 1881 and 1882, and shall direct the new governing body to pay to such trustees, or any two of them, to be chosen for that purpose by the commissioners the amount of the costs, charges, and expenses so incurred as aforesaid out of the first moneys which shall come to their hands or be placed at the disposal of the said governing body.

Saving for endowments at Christ's Hospital.

52. Nothing in this act shall apply to any endowment or part of any endowment which, or the income whereof, is applicable, or is applied for the benefit of children maintained or educated by the governors of Christ's Hospital, in the City of London, and presented thereto by any parochial authority in the City of London or otherwise.

Interpretation of terms.

53. In this act, unless the context otherwise requires—

The term "Metropolis" means the places for the time being constituting the metropolitan police district (*m*), together with the City of London and the liberties thereof:

The term "governing body" means any body corporate, persons, or person, who hold or holds, or who have or

(*m*) These are determined by the following acts:—10 Geo. IV. c. 44, ss. 4, 34, 35, and Schedule; 2 & 3 Vict. c. 47, s. 2; and 3 & 4 Vict. c. 84, ss. 2 and 5.

has any power of control or management over, any charity property or endowment dealt with by this act: 46 & 47 Vict. c. 36, s. 53.

The term "endowment" means every description of property, real, personal, or mixed, which is dedicated to any such charitable uses as are referred to in this act, in whomsoever such property may be vested and in whosesoever name it may be standing, and whether such property is in possession or reversion, or a thing in action:

The term "Committee of Council on Education" means the Lords of the Committee of her Majesty's Privy Council on Education:

The term "person" includes any body of persons, whether corporate or unincorporate.

54. This act, so far as is consistent with the tenor thereof, shall be construed together with the Charitable Trusts Acts, 1853 to 1869. Act to be construed together with Charitable Trusts Acts.

SCHEDULES.

THE FIRST SCHEDULE.

Sections 13, 15.

Saint Andrew, Holborn.
Saint Botolph, Aldgate.
Saint Botolph, Bishopsgate.
Saint Bride, Fleet Street.
Saint Giles, Cripplegate.

THE SECOND SCHEDULE.

Sections 14, 16, 17.

Allhallows, Barking.
Allhallows, Bread Street.
Allhallows the Great.
Allhallows the Less.
Allhallows, Honey Lane.
Allhallows, Lombard Street.
Allhallows, London Wall.
Allhallows, Staining.
Christ Church, Newgate Street.
Saint Alban, Wood Street.
Saint Alphage, London Wall.
Saint Andrew by the Wardrobe.
Saint Andrew Hubbard.
Saint Andrew Undershaft.
Saint Anne and Saint Agnes.
Saint Anne, Blackfriars.
Saint Antholin.
Saint Augustine.
Saint Bartholomew the Great.
Saint Bartholomew the Less.
Saint Bartholomew, Exchange.
Saint Bartholomew, Moor Lane.

46 & 47 Vict. c. 36.

Saint Bene't, Fink.
Saint Bene't, Gracechurch.
Saint Bene't, Paul's Wharf.
Saint Bene't, Sherehog.
Saint Botolph, Aldersgate.
Saint Botolph, Billingsgate.
Saint Botolph, Glasshouse Yard.
Saint Christopher-le-Stocks.
Saint Clement, Eastcheap.
Saint Dionis, Backchurch.
Saint Dunstan in the East.
Saint Dunstan in the West.
Saint Edmund the King and Martyr.
Saint Ethelburga.
Saint Faith under Saint Paul's.
Saint Gabriel, Fenchurch.
Saint George, Botolph Lane.
Saint Gregory by Saint Paul.
Saint Helen, Bishopsgate.
Saint James, Garlickhythe.
Saint James within Aldgate.
Saint John the Baptist, upon Walbrook.
Saint John the Evangelist.
Saint John Zachary.
Saint Katherine Coleman.
Saint Katherine Cree.
Saint Lawrence, Jewry.
Saint Lawrence, Pountney.
Saint Leonard, Eastcheap.
Saint Leonard, Foster Lane.
Saint Magnus the Martyr.
Saint Margaret Moyses.
Saint Margaret, Lothbury.
Saint Margaret, New Fish Street.
Saint Margaret Pattens.
Saint Martin, Ludgate.
Saint Martin, Orgars.
Saint Martin, Outwich.
Saint Martin, Pomeroy.
Saint Martin, Vintry.
Saint Mary, Abchurch.
Saint Mary, Aldermanbury.
Saint Mary, Aldermary.
Saint Mary-at-Hill.
Saint Mary, Bothaw.
Saint Mary, Colechurch.
Saint Mary-le-Bow.
Saint Mary Magdalen, Milk Street.
Saint Mary Magdalen, Old Fish Street.
Saint Mary, Mounthaw.
Saint Mary, Somerset.
Saint Mary, Staining.
Saint Mary, Woolchurch Haw.
Saint Mary, Woolnoth.
Saint Matthew, Friday Street.
Saint Michael, Basishaw.
Saint Michael, Cornhill.
Saint Michael, Crooked Lane.
Saint Michael-le-Querne.
Saint Michael, Paternoster Royal.
Saint Michael, Queenhithe.
Saint Michael, Wood Street.
Saint Mildred, Bread Street.
Saint Mildred the Virgin, Poultry.
Saint Nicholas, Acons.
Saint Nicholas, Coleabbey.
Saint Nicholas, Olave.
Saint Olave, Hart Street, with Saint Nicholas in the Shambles.
Saint Olave, Old Jewry.
Saint Olave, Silver Street.
Saint Pancras, Soper Lane.
Saint Peter, Cornhill.
Saint Peter-le-Poer.
Saint Peter, Paul's Wharf.
Saint Peter, Westcheap.
Saint Sepulchre.
Saint Stephen, Coleman Street.
Saint Stephen, Walbrook.
Saint Swithin, London Stone.
Saint Thomas Apostle.
Saint Thomas in the Rolls.
Saint Vedast, Foster.
Holy Trinity the Less.
Holy Trinity, Minories.
Holy Trinity, Gough Square.

PRISON CHARITIES ACT, 1882.

45 & 46 Vict. c. 65.

An Act to make provision respecting certain Prison Charities.

[18th August, 1882.]

45 & 46 Vict. c. 65, s. 1.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited as the Prison Charities Act, 1882.

Power of Charity Commissioners, on application of Secretary of State, to make scheme respecting prison charities.

2. Where the Charity Commissioners for England and Wales (in this act referred to as the Charity Commissioners) would have power to make an order for the establishment of a scheme for the administration of a prison charity as hereinafter defined, if application for such scheme were made by the trustees or persons acting in the administration of the charity, such commissioners shall also have power to make a like order, upon the application of one of her Majesty's principal Secretaries of State, in like manner as if he were the said trustees, and the Charitable Trusts Acts, 1853 to 1869, shall apply accordingly.

16 & 17 Vict. c. 137, &c.

Provided that nothing in this act shall authorize the making of a scheme upon the application of the Secretary of State in a case where the prison charity is applied for

45 & 46 Vict. c. 65, s. 2.

other purposes in pursuance of any special Act of Parliament (*a*).

For the purposes of this act the expression "prison charity" means a charity the endowment of which is applicable for the benefit of any prisoners, or for any purpose connected with any prisoners or prison, whether the prisoners be confined in or the prison be a common gaol, house of correction, or other place of confinement, and where the endowment of a charity is partly applicable for the purposes aforesaid and partly for other purposes, so much of the endowment as appears to the Charity Commissioners to be applicable for the aforesaid purposes shall be deemed to be a prison charity within the meaning of this act.

(*a*) As by the Queen's Prison Discontinuance Act, 1862, which directed that the charitable gifts and bequests applicable to the relief of poor debtors and other prisoners in the Queen's Prison should be applied for the relief of discharged or other prisoners in such manner as might be settled by a judge of the Court of Chancery in chambers.

MUNICIPAL CORPORATIONS ACT, 1883.

46 & 47 Vict. c. 18.

An Act to make provision respecting certain Municipal Corporations and other Local Authorities not subject to the Municipal Corporation Act.

[29th June, 1883.]

46 & 47 Vict. c. 18.

Whereas commissioners were appointed by his late Majesty King William the Fourth (in this act referred to as the Commissioners of 1834) to inquire into Municipal Corporations in England and Wales, and made reports respecting divers corporations, including most of those mentioned in the schedules to this act:

And whereas the Municipal Corporation Acts consolidated and repealed by the Municipal Corporations Act, 1882 (*a*), were passed and applied to most of the places mentioned in the above report, but not to those which are mentioned in the schedules to this act:

And whereas commissioners were appointed by her Majesty to inquire into municipal corporations not subject to the Municipal Corporation Acts (in this act referred to as the Commissioners of 1876), and have made reports to her Majesty respecting the places mentioned in the schedules

(*a*) 45 & 46 Vict. c. 50.

46 & 47 Vict. c. 18, s. 1.

to this act, and it is expedient to make the provisions hereinafter appearing respecting those places:

Be it therefore enacted by the queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This act may be cited as the Municipal Corporations Act, 1883.

Abolition of special judicial bodies, exclusive rights of trading, exempting from juries, &c.

2. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as her Majesty in Council may in the case of any place or places appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this act) apply to each of the places mentioned in the schedules to this act; that is to say,

(1.) All civil, criminal, and admiralty jurisdiction of any corporate officer, court, or judge of the said place appointed or holding office under any charter, grant, or prescription shall cease, whether such jurisdiction is conferred by such charter, grant, or prescription, or by any act, and the place shall be subject to the same jurisdiction as the part of the county in which it is situate or to which it adjoins, and if it adjoins more than one county or part of a county, then as the county or part with which it has the longest common boundary:

(2.) All exclusive rights of trading, local exemptions from juries, and other local franchises, privileges, and exemptions existing under any charter or grant or prescription shall cease.

46 & 47 Vict. c. 18, s. 3.

Future abolition of corporations, except as provided by new charter or by scheme under 40 & 41 Vict. c. 69.

3. On and after the twenty-fifth day of March one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September one thousand eight hundred and eighty-six, as her Majesty in Council may, in the case of any place or places, appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this act) apply to each of the places mentioned in the schedules to this act to which her Majesty may not be pleased before the said day to grant a new charter (*aa*); that is to say,

(a.) The place shall not be a corporate town or borough, and any municipal or other corporation thereof existing under any charter or grant or prescription shall be dissolved:

(b.) All property of any corporation in the place which is dissolved by this act, or of any person as member or officer thereof, or of any court or judge whose jurisdiction is abolished by this act, shall be applied for the public benefit of the inhabitants of the place in such manner as may be for the time being provided by a scheme of the Charity Commissioners, or, in a case where a scheme is made by the Local Government Board, by that scheme, and shall vest in such persons or body corporate as may be specified in such scheme.

(2.) Provided that until any such scheme takes effect the said property shall continue to be held, managed, and enjoyed as heretofore in like manner as if a scheme of the Charity Commissioners, in pursuance of this act, had provided for such holding, management, and enjoyment, and for that purpose the persons managing the property shall continue in like manner as if they were a body constituted by the scheme for the administration of such property, but

(*aa*) Charters have been granted to the places marked with an asterisk in the schedules to this act.

46 & 47 Vict. c. 18, s. 3.

the legal estate in the property shall vest in the official trustees (*b*).

Saving for new charters and for charities.

4. Nothing in this act shall prevent the application to any place of any charter applying the Municipal Corporation Acts which her Majesty may be pleased to grant, or affect anything done in pursuance of those acts or any scheme thereunder, and shall not affect the operation of any such charter, thing, or scheme; save that nothing in the said acts or scheme shall authorise the establishment or continuance of any court for the trial of civil actions.

(2.) Nothing in this act shall affect the right to the benefit of any charity, or shall alter or confer any power of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this act.

[Sect. 5 provides for an inquiry under the Privy Council as to the expediency of extending the Municipal Corporations Acts to the places mentioned in the First Schedule to the act, Part I.; sect. 6 gives the Privy Council power to preserve certain courts and officers; sect. 7 deals with schemes made by the Local Government Board for places under local boards or improvement commissioners.]

Power of Charity Commissioners.

8. (1.) The Charity Commissioners may provide, by the appointment of interim trustees and otherwise, for the security and proper management and application of the property, for the application of which such commissioners have, or may in certain events have, power under this act to make a scheme.

(2.) If any such property has after the first day of March one thousand eight hundred and eighty-three, and before the date at which a charter or a scheme under this

(*b*) *I. e.* the official trustee of charity lands and the official trustees of charitable funds.

act, or the Municipal Corporations Act, 1882, as the case may be, takes effect, been alienated by way of sale, mortgage, grant, lease, charge, or otherwise, and such alienation has not been made in pursuance of some covenant, contract, or agreement bonâ fide made or entered into on or before the said first day of March, or of some resolution duly entered in the corporation books of the corporation on or before the said first day of March, or in pursuance of any right saved by this act, and such alienation has been made collusively and for no consideration, or for insufficient consideration, such alienation may be set aside in the like proceedings (instituted with the consent of the Charity Commissioners or of the Attorney-General) (*c*) and in like manner as a lease of land of a charity granted without due consideration may be set aside: Provided that if a charter is granted or a scheme made whereby the property is affected, the said proceedings shall be commenced within one year after the charter or scheme takes effect. 46 & 47 Vict. c. 18, s. 8.

(3.) Anything authorised by this act to be done by the Charity Commissioners may be done by an order of those commissioners, which may be made in like manner as if the property were the endowment of a charity and application had been made as provided by the Charitable Trusts Acts, 1853 to 1869 (*d*); and an order of the Charity Commissioners may be made at any time after the passing of this act, so, however, that the order shall not take effect until such date as the Charity Commissioners fix as being, 16 & 17 Vict. c. 137. 32 & 33 Vict. c. 110.

(*c*) *I. e.* on information, under the old practice; on petition under Sir Samuel Romilly's Act (*ante*, p. 145); on application by originating summons under sect. 28 of the Charitable Trusts Act, 1853, or on application to a County Court under sect. 32 of the same act, and sect. 11 of the Charitable Trusts Act, 1860.

(*d*) See esp. sects. 2 and 4 of the Charitable Trusts Act, 1860.

46 & 47 Vict. c. 18, s. 3.

in their opinion, under the circumstances of the case, most consistent with the purposes of this act.

(4.) Any corporation or person directly affected by any order of the Charity Commissioners under this act in relation to any property made before a scheme under this act has provided for the application of such property, or directly affected by the order of the Charity Commissioners which first establishes a scheme providing for the application of such property, may, if aggrieved by the order, appeal (except as hereinafter provided) to the Privy Council, and the Privy Council after considering the objections to the order and, if it seem necessary, hearing the parties, may make such order as in their opinion the Charity Commissioners ought to have made, and such order shall have the same effect under this act as if made by the Charity Commissioners, and an appeal shall not lie to the High Court of Justice under the Charitable Trusts Acts, 1853 to 1869 (*e*), against any order against which an appeal to the Privy Council can be had in pursuance of this enactment.

(5.) After a scheme has been made under this act providing for the application of any property the Charitable Trusts Acts, 1853 to 1869, shall apply in all respects as if the scheme were a scheme made in pursuance of those acts, and the property shall for the purpose of those acts be deemed to be the endowment of a charity.

Provision as to property and transfer thereof.

9. (1.) All property by this act vested in the official trustees or any body corporate or persons shall, so far as the same can be transferred by this act, be transferred by virtue of this act, and so far as the same cannot be so transferred, be held in trust for those trustees, body

(*e*) See sect. 8 of the Charitable Trusts Act, 1860, *ante*, p. 213.

corporate, or persons, and shall be vested for the same estate and interest, and subject to the same liabilities, for and subject to which such property was held at the time immediately before the same becomes so vested. 46 & 47 Vict. c. 18, s. 9.

(2.) For the purposes of this act the expression "property" includes all property, real and personal, and all things in action, and all rights of common or commonable rights, and rights to toll, and all franchises, privileges, and rights which have any pecuniary value, and all charters, records, deeds, books, and documents, and includes any estate or interest, legal or equitable, in any property as so defined; and all property held, enjoyed, claimed, or administered by any corporation, court, judge, or person shall for the purposes of this act be deemed to be the property of such corporation or person.

(3.) All powers and duties conferred or imposed by any local act of parliament (including a provisional order confirmed by parliament) on, and all trusts administered by, any corporation abolished by this act, or any officers or nominees of such corporation, either alone or jointly with other persons, shall vest in and be exercised, and performed, and administered by such persons as may be provided by a scheme under this act, and until such scheme takes effect by the same persons as at the passing of this act.

(4.) Any question which may arise as to whether anything is property within the meaning of this act, or as to whether anything is vested in the official trustees or any body corporate or persons as provided by this act, shall in the first instance be decided by the Charity Commissioners, subject, nevertheless, to an appeal to the High Court of Justice, as provided by section eight of the Charitable Trusts Act, 1860, and such appeal may be presented by any person interested or claiming to be interested in the 23 & 24 Vict. c. 136.

46 & 47 Vict. c. 18, s. 9.

property, and the provisions of this act with respect to an appeal to the Privy Council shall not apply.

[Sects. 10 and 11 contain a saving of the rights of freemen and burgesses and of other vested interests.]

Saving for powers of Committee of Council and Charity Commissioners.

12. Nothing in this act shall be in derogation of any power otherwise vested in the Committee of Council, or the Charity Commissioners, and the Committee of Council and Charity Commissioners may exercise for the purposes of this act all powers otherwise vested in them in relation to boroughs and charities respectively.

[Sects. 13 and 14 contain saving provisions with respect to the Cinque Ports, and Winchelsea.]

Provision as to local authorities and officers. 45 & 46 Vict. c. 50.

15. (1.) Every body referred to in the first schedule to this act shall, notwithstanding any mistake in the name or description thereof, be subject to this act, as a corporation, and be deemed to be a local authority within the meaning of section two hundred and thirteen of the Municipal Corporations Act, 1882.

(2.) Any mayor, jurat, recorder, justice of the peace, coroner, bailiff, sergeant, inspector, or constable, or any other officer by whatever name called, having or claiming the authority of any judge or officer above named, shall be deemed to be included in this act in the expression judge or officer, as the case may be.

(3.) Where in any report of the Commissioners of 1834, or in any report of the Commissioners of 1876, any corporation, court, sessions, judge, recorder, justice, coroner, constable, inspector, authority, or officer, or any franchise, privilege, right, or exemption, or any property, is mentioned in connection with any place mentioned in the schedules to this act, that mention shall be evidence that the same is subject to this act.

46 & 47 Vict. c. 18, s. 16.

Saving for rights of voting and acts done.

16. (1.) Nothing in this act shall affect the right enjoyed by any person at the passing of this act to vote for any member or members to serve in Parliament.

(2.) The abolition by this act of any jurisdiction shall not affect anything done in pursuance of such jurisdiction before it is abolished; any offence committed before such abolition may be prosecuted, tried, and punished as if the jurisdiction had been abolished at the time when the offence was committed.

[Sects. 17—24 contain saving provisions with respect to Romney Marsh, Havering-atte-Bower, Alnwick, Laugharne and Malmesbury, Newport (Pembroke), Over, Altrincham, and Corfe.]

Saving for certain rights.

25. (1.) Nothing in this act shall diminish the liability of the owner or occupier of any tenement to any rent or sum payable under any charter granted to any corporation mentioned in the schedules to this act, and any person entitled to receive such rent or sum shall have the same right and remedy for recovering the same as prior to the passing of this act, and also upon the abolition by this act of the corporation under the charter shall have the power of such corporation or of any officer of such corporation to enforce payment of such rent or sum.

(2.) The provisions of this section and of the other parts of this act for protecting the rights of persons interested shall have effect in favour of her Majesty, her heirs and successors, and of any body corporate, not being a corporation abolished by this act, in like manner as if her Majesty, her heirs and successors, and such body corporate, were included in the term person.

[Subs. (3) contains a saving of certain pending legal proceedings against the corporation of Holt.]

46 & 47 Vict. c. 18, s. 26.

Repeal of acts and charters.

26. (1.) So much of any act, law, charter, or usage as is inconsistent with this act is hereby repealed.

(2.) The act of the session of the seventeenth and eighteenth years of the reign of her present Majesty, chapter seventy-one, intituled "An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts," shall, on and after the first day of January one thousand eight hundred and eighty-six, or such later day, not after the first day of September one thousand eight hundred and eighty-six, as her Majesty in Council may appoint, be repealed, without prejudice to any rate previously made in pursuance of that act, and without prejudice to the making of any rate which is by this act authorised to be made; and any such rate may be made, levied, collected, and applied, as nearly as may be, as if the said act had not been repealed.

Definitions.

27. In this act, unless the context otherwise requires,—

The expression "Privy Council" means the Lords of her Majesty's most Honourable Privy Council, or any two of them:

The expression "Committee of Council" means a committee of the said Lords:

45 & 46 Vict. c. 50.

The expression "Municipal Corporation Acts" has the same meaning as in the Municipal Corporations Act, 1882:

The expression "Charity Commissioners" means the Charity Commissioners for England and Wales:

16 & 17 Vict. c. 137. 32 & 33 Vict. c. 110.

The expression "official trustees" means, as respects real property the official trustee of charity lands, and as respects all other property the official trustees of charitable funds, acting under the Charitable Trusts Acts, 1853 to 1869.

SCHEDULES.

FIRST SCHEDULE.

PLACES REPORTED ON BY THE COMMISSIONERS OF 1876.

PART I.

Places to which the Commissioners of 1876 *consider that the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
*Aldeburgh	"The bailiff and burgesses of the borough of Aldeburgh."
Alnwick	"The chamberlains, common council, and freemen."
*Appleby	"The mayor, aldermen, and capital burgesses."
*Bishop's Castle	"The bailiff and burgesses of the borough of Bishop's Castle."
Bradninch	"The mayor and burgesses of the borough of Bradninch."
*Christchurch	"The mayor and burgesses of the borough of Christchurch."
*Henley-on-Thames	"The mayor, aldermen, bridgemen, and burgesses of Henley-on-Thames."
*Kidwelly	"The mayor, aldermen, bailiffs, and burgesses."
*Llanfyllin	"The bailiffs and burgesses of the borough of Llanfyllin."
*Lostwithiel	"The mayor and burgesses of Lostwithiel."
*Lydd	"The bailiffs, jurats, and commonalty of the town of Lydd."
*Malmesbury	"The aldermen and burgesses of the borough of Malmesbury."
*Montgomery	"The bailiffs and burgesses of the borough of Montgomery."
*New Romney	"The mayor, jurats, and commonalty of the town and port of New Romney."
*Okehampton	"The mayor and burgesses of the town and borough of Okehampton."
Over	"The mayor of Over."
*Queenborough	"The mayor, jurats, bailiffs, and burgesses of Quinborowe."
Radnor	"The bailiff, aldermen, and burgesses of New Radnor."
*Saltash	"The mayor and free burgesses of the borough of Saltash."

* Places to which a charter has been granted prior to March 25th, 1886.

Places.	Corporation or reputed Corporation.
*Sutton Coldfield	"The warden and society of the royal town of Sutton Coldfield."
*Wareham	"The mayor, capital burgesses, and assistants of the borough of Wareham."
*Wilton	"The mayor and burgesses of the borough of Wilton."
*Wokingham	"The aldermen and burgesses of the town of Wokingham."
*Woodstock	"The mayor and commonalty of the borough of New Woodstock."
Wootton Bassett	"The mayor, aldermen, and burgesses of the borough of Wootton Bassett."

PART II.

Places not mentioned by the Commissioners of 1876 *as places to which the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Alresford	"Bailiff and burgesses of New Alresford."
Altrincham	"The mayor, aldermen, and burgesses of the borough of Altrincham."
Axbridge	"The mayor, aldermen, and burgesses of the borough of Axbridge."
Berkeley	"The mayor and aldermen of the borough of Berkeley."
Bovey Tracey	"The mayor and freeholders of Bovey Tracey."
*Brackley	"The mayor, aldermen, and burgesses of the borough of Brackley."
Brading	"The bailiffs, burgesses, and commoners of the borough of Brading."
Camelford	"The mayor and burgesses of the vill of Camelford."
Chipping Campden	"The high steward, deputy steward, treasurer, senior bailiff, junior bailiff, and capital and inferior burgesses of Chipping Campden."
Corfe Castle	"The mayor, barons, and inhabitants of Corfe."
*Cowbridge	"The bailiffs, aldermen, and burgesses of the town of Cowbridge."
Dinas Mowddwy	"The mayor and burgesses of Dinas Mowddwy."
Dunwich	"The bailiffs, burgesses, and commonalty of the borough and corporation of Dunwich."

* Places to which a charter has been granted, prior to March 25th, 1886.

Places.	Corporation or reputed Corporation.
Dursley	"The bailiff and aldermen of Dursley."
East Looe	"The mayor and free burgesses of the borough of East Looe."
Fordwich	"The mayor, jurats, and commonalty of the town of Fordwich."
Garstang	"The bailiff and burgesses of the borough of Garstang."
Great Dunmow	"The bailiff and burgesses of the borough of Great Dunmow."
Harton	"The portreeve and burgesses of Harton."
Havering-atte-Bower	"The tenants and inhabitants of the lordship or manor of Havering-atte-Bower."
*Higham Ferrers	"The mayor, aldermen, and burgesses of the borough and parish of Higham Ferrers."
Holt	"The mayor and burgesses of Holt."
Ilchester	"The bailiff and burgesses of Ilchester."
Kenfig	"The constable of the castle, portreeve, and burgesses of Kenfig."
Kilgerran	"The portreeve and burgesses of Kilgerran."
*Lampeter	"The burgesses of the borough of Lampeter Pont Stephen."
Langport Eastover	"The portreeve and commonalty of the borough of Langport."
Laugharne	"The portreeve and burgesses of the town and corporation of Laugharne."
Llantrissant	"The constable of the castle, portreeve, aldermen, and burgesses of Llantrissant."
Loughor	"The portreeve, aldermen, and burgesses of the borough of Loughor."
Marazion	"The mayor, burgesses, and inhabitants of the town of Marazion."
Nevin	"The mayor, bailiffs, and burgesses of the town and borough of Nevin."
Newport (Salop)	"The high steward, bailiffs, and burgesses of Newport."
*Newport (Pembroke)	"The mayor, aldermen, and burgesses of the borough of Newport."
Orford	"The mayor and commonalty of the borough of Orford."
Overton	"The burgesses of Overton."
Petersfield	"The mayor of Petersfield."
Pevensey	"The bailiff, jurats, and commonalty of the town and liberty of Pevensey."
*Romney Marsh	"The bailiff, jurats, and commonalty."
St. Clear's	"The burgesses and commonalty of St. Clear's."
Seaford	"The bailiff, jurats, and freemen of the town and port of Seaford."
Thornbury	"The bailiff and aldermen of Thornbury."
Usk	"The portreeve and burgesses of Usk."

* Places to which a charter has been granted, prior to March 25th, 1886.

46 & 47 Vict. c. 18.

Places.	Corporation or reputed Corporation.
Westbury	"The mayor and burgesses of Westbury."
Wickwar	"The mayor and aldermen of Wickwar."
Winchcomb	"The bailiffs and burgesses of Winchcomb."
Winchelsea	"The mayor, jurats, and commonalty of the ancient town of Winchelsea."
Wootton-under-Edge	"The mayor and aldermen of Wootton-under-Edge."
Yarmouth (Isle of Wight) ..	"The mayor and chief burgesses of the borough of Yarmouth."

NOTE.—Since the report of the commissioners a charter has been granted to the town of Lewes.

SECOND SCHEDULE.

PLACES IN WHICH THE COMMISSIONERS OF 1876 REPORT THAT A MUNICIPAL CORPORATION HAS NOT EXISTED OR HAS BECOME VIRTUALLY EXTINCT.

PART I.

Places mentioned in paragraph (15) *of the Report of the Commissioners of* 1876 *as places which either have not been municipal or have long since ceased to be so :—*

Bala.	Fowey.	Presteign.
*Bangor.	Grampound.	Ruyton.
Bridlington.	Harlech.	St. David's.
Chipping Sodbury.	Hay.	Tavistock.
Criccieth.	Machynlleth.	Weobley.
Crickhowell.	Midhurst.	Wiston.
Farnham.	Newborough.	
Fishguard.	Newton (Lancashire).	

PART II.

Places mentioned in paragraph (16) *of the Report of the Commissioners of* 1876 *as having had municipal corporations in* 1835 *:—*

Bossinny.	Llanelly.	Rhuddlan.
Caerwys.	Newtown (Isle of Wight).	Tregony.
Castle Rising.	Plympton Earle.	West Looe.
Clun.		

* Place to which a charter has been granted, prior to March 25th, 1886.

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